DOCUMENT RESUME

ED 104 210 HE 006 331

AUTHOR Mannix, Thomas M., Ed.
TITLE Collective Bargaining in Higher Education. Proceedings, Second Annual Conference, April 1974.
INSTITUTION City Univ. of New York, N.Y. Bernard Baruch Coll. National Center for the Study of Collective Bargaining in Higher Education.
PUB DATE Apr 74
NOTE 114p.; Proceedings from Conference on Collective Bargaining in Higher Education (2nd, New York, New York, April 1974)
AVAILABLE FROM National Center for the Study of Collective Bargaining in Higher Education Baruch College, 17 Lexington Avenue, City University of New York, New York 10010 ($5.00)

EDRS PRICE MF-$0.76 HC Not Available from EDRS..PLUS POSTAGE
DESCRIPTORS *Arbitration; *Collective Bargaining; *Collective Negotiation; Community Colleges; *Conference Reports; Grievance Procedures; *Higher Education; Private Colleges; Student Participation
IDENTIFIERS City University of New York; CUNY

ABSTRACT

The National Center for the Study of Collective Bargaining in Higher Education (NCSCBHE) was founded at Baruch College, City University of New York at a time when collective bargaining for faculty members and other professionals is one of the newest and fastest growing phenomena in higher education. This volume represents papers presented at the Second Annual Conference of the center conducted in New York City on April 8 and 9, 1974. The papers covered a wide range of topics, as indicated by the program: community colleges and collective bargaining; private colleges and unit determination; collegiality and collective bargaining; the CUNY grievance and arbitration experience: what does it teach about collective bargaining; past practices and collective bargaining. Also included is a listing of the distinguished advisory committee of the center, the center's faculty advisory committee, and a list of the center's publications. (PG)

ED104210

Collective Bargaining in Higher Education

PROCEEDINGS, SECOND ANNUAL CONFERENCE APRIL 1974

Thomas M. Mannix, Editor

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION
THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

PERMISSION TO REPRODUCE THIS COPYRIGHTED MATERIAL BY MICROFICHE ONLY HAS BEEN GRANTED BY
National Center for Study of Collective Bargaining in Higher Ed
TO ERIC AND ORGANIZATIONS OPERATING UNDER AGREEMENTS WITH THE NATIONAL INSTITUTE OF EDUCATION. FURTHER REPRODUCTION OUTSIDE THE ERIC SYSTEM REQUIRES PERMISSION OF THE COPYRIGHT OWNER

HE 006 331

2/3

National Center for the Study of
Collective Bargaining in Higher Education
Baruch College-CUNY

Table of Contents

Order of speeches for the Journal of the Second Annual Conference of the National Center for the Study of Collective Bargaining in Higher Education.

Introduction

Page

Theodore W. Kheel—How Do College Gentlemen Break Impasses? 9

Thomas A. Shipka—Collective Bargaining on the Campus—The Tip of the Iceberg..... 14

Sanford Schneider—Differing Faculty Tasks; Differing Faculty Structure; Differing Collective Bargaining..... 21

Bruce MacDonald—Differing Faculty Tasks; Differing Faculty Structure; Differing Collective Bargaining?..... 27

Ralph E. Kennedy—NLRB and Faculty Bargaining Units: The Charting of an Uncharted Area..... 35

Caesar Naples—Collegiality and Collective Bargaining: They Belong Together..... 51

Lawrence DeLucia—Collegiality and Collective Bargaining: Oil and Water..... 58

Maurice C. Benewitz and Thomas M. Mannix—The CUNY Grievance and Arbitration Experience: What Does It Teach About Collective Bargaining?..... 61

Judith P. Vladeck—The Uses of the Past in Bargaining Relationships..... 70

Carl R. Westman—The Inappropriateness of the Past for the Future..... 77

Robert Birnbaum—The Effects of Collective Bargaining on Faculty Compensation in Higher Education..... 83

Donald E. Walters—Do Students Have A Place in Collective Bargaining?..... 97

Alan Shark—Do Students Have Any Place in Collective Bargaining?..... 102

Norman Swanson—Do Students Have Any Place in Collective Bargaining?..... 106

The Distinguished Advisory Committee to the Center..... 111

Introduction

When the *Proceedings* of the National Center's First Annual Conference, April 1973 went to press in September 1973, 211 institutions (more than 321 colleges) had a collective bargaining agent to represent faculty members and, often, non-teaching professionals. As this volume goes to press in the summer of 1974 statistics at the National show some 244 institutions with bargaining agents covering more than 350 colleges.

This volume represents papers presented at the Second Annual Conference of the NCSCBHE conducted in New York City on April 8 and 9, 1974. The papers covered a wide range of topics as indicated by the program:

Monday, April 8, 1974

9:15	*Introduction* Maurice C. Benewitz, Director, National Center
	Welcome Clyde J. Wingfield, President, Baruch College
9:30 - 10:45	*Community Colleges and Collective Bargaining*
Chairman:	Theodore H. Lang, Professor of Education and Director - Educational Administration Program, Baruch College
	"Differing Faculty Tasks: Differing Faculty Structure: Differing Collective Bargaining?"
	Sanford Schneider, Director of Development, Burlington County College, New Jersey
	Bruce MacDonald, Executive Director, Associated Community Colleges and Faculties, Albany, New York
11:00 - 12:00	*Private Colleges and Unit Determinations*
	Ralph Kennedy, Member National Labor Relations Board, Washington, D.C.
12:00 - 2:00	*Luncheon*
Chairman:	Julius Manson, Professor of Management, Baruch College
	"Why A Professional Association Turned To Collective Bargaining In Higher Education"
	Thomas Shipka, President-elect, National Society of Professors
2:00 - 3:15	*Collegiality and Collective Bargaining*
Chairman:	Aaron Levenstein, Professor of Management, Baruch College

"Collegiality and Collective Bargaining: Oil and Water"

Caesar Naples, Assistant Vice Chancellor for Employee Relations, State University of New York

"Collegiality and Collective Bargaining: They Belong Together"

Lawrence DeLucia, President, Senate Professional Association; Member Economics Department, State University of New York, Oswego

3:30 - 4:45 — *The CUNY Grievance and Arbitration Experience: What Does It Teach About Collective Bargaining?*

Maurice C. Benewitz, Director National Center

Thomas M. Mannix, Assistant Director, National Center

Tuesday, April 9, 1974

9:30 - 10:45 a.m — *Past Practices and College Bargaining*

Chairman: Samuel Ranhand, Professor of Management, Baruch College

"The Uses of the Past In Bargaining Relationships"

Judith C. Vladeck, Attorney, New York City

"The Inappropriateness of the Past For the Future"

Carl R. Westman, Director of Personnel and Chief Negotiator, Oakland University, Rochester, Michigan

11:00 - 12:00 — *Economic Impact of Bargaining*

"The Effects of Collective Bargaining On Faculty Compensation In Higher Education"

Robert Birnbaum, Chancellor, University of Wisconsin - Oshkosh (by previous agreement with the author this paper will not appear in the Proceedings)

12:00 - 2:00 — *Luncheon*

Chairman: Maurice C. Benewitz

"How Do College Gentlemen Break Impasses?"

Theodore W. Kheel, Lawyer, Mediator and Arbitrator, New York City

2:00 - 3:15 — *Students and Collective Bargaining*

Chairman: Bernard Mintz, Executive Vice President, Professor of Management, Baruch College

"Do Students Have Any Place In Collective Bargaining?"

Panelists: Donald Walters, Deputy Director, Massachusetts State College System, Massachusetts

Alan Shark, President, Student Senate, City University of New York

Norman Swenson, President, Cook County College Teachers Union, Chicago, Illinois

Conclusion

The National Center for the Study of Collective Bargaining in Higher Education was founded at Baruch College, City University of New York, at a time when collective bargaining for faculty members and other professionals is one of the newest and fastest growing phenomena in higher education.

Conceived as national in scope, objective in approach and comprehensive in service, the Center will embrace the following activities:

(1) A national databank on collective bargaining in higher education with emphasis on faculty bargaining. A grant from the Elias Lieberman Memorial Foundation has enabled the Center to establish the Elias Lieberman Higher Education Contract Library.

(2) An information clearinghouse with suitable media for information circulation and exchange, including a periodic newsletter, annual journal, and special bulletins on significant developments.

(3) An ongoing program of interdisciplinary research and analysis on issues in the field.

(4) A program of collective bargaining training for education leaders through seminars, institutes, and other programs. Its long-range goal is to develop a corps of skilled and informed leaders for both sides of the bargaining table.

As part of this program, the National Center has scheduled a mock bargaining workshop for October 7 and 8, 1974 in New York City and will conduct its Third Annual Conference on April 28 and 29, 1975 in New York City.

Acknowledgments

A publication of this type relies heavily on the efforts of many people. The conference contributors and participants provide the basic information. The National Advisory Committee provides ideas and suggests themes. The Faculty Advisory Committee of the National Center provides time, and energy in planning and carrying out the annual conference. Special recognition should be paid to the audio-visual staff of Baruch College under Professor Lajos Egervary, the College Relations Staff under Robert Seaver, and Frank Lausey of the Economics and Finance Department. Transcribing the tapes and preparing the manuscript for publication was done by Carol Kenny, Annie Polite, and Miriam Abrams of the National Center secretarial staff. Finally, the editor gives special

thanks to Mrs. Evan Mitchell for the long hours spent in supervising the annual conference and in the preparation of this volume. The cover design was created by Gwendolin K. Ganim.

F.M.M. editor

How Do College Gentlemen Break Impasses?

by THEODORE W. KHEEL
Lawyer, Mediator and Arbitrator, New York City

How do college gentlemen break impasses? Not by letting them slip from their fingers. But seriously, you asked a question and I suppose I would be unkind if I said very poorly or if I did not explain what I understand you to mean by the word impasses. I will not undertake to define the term college gentlemen since I assume that's well understood by all of us. You use the word impasse to suggest that point in collective bargaining where the employers or their spokesman and the employees or their representatives disagree. Now, I think that really puts the cart before the horse because before we can talk about how those disagreements that arise in collective bargaining get resolved and whether, as the question implies, there should be or should not be the right to strike (and I might say the right to take a strike, I'll come back to that a little bit) we ought to first define what we mean by collective bargaining. That may seem a little strange because we use the term constantly and it is something that we consider to be fairly well known to all of us. It's a term that is used in the newspapers and in other writings on the subject of employer-employee relationships. I'd like to suggest to this audience that this term is very poorly understood and primarily because it isn't one thing, it really is two things.

History of Term

I have tried recently to trace the term collective bargaining, and I find that it was used sparingly in the 19th Century. The first time was probably by Horace Greely in a column he wrote in the *New York Tribune* in 1853 at a time when he was not only founder and head of Local 6 of the International Typographical Union but also the publisher of the *New York Tribune*, which put him in a unique position to understand collective bargaining since he was on both sides of that table. However, he didn't use collective bargaining in the way we do now. Nor was it used in that way by Sidney and Beatrice Webb, who are sometimes credited with being among the first to use the term. And indeed, we see very little use of the term in the early days of labor's struggle to organize and to correct through organization the injustices and inequities of the industrial revolution.

Collective bargaining was a procedure of the efforts of individual workers to get together to correct injustices and in that sense it was a part of a Civil Rights Movement, which is what the labor movement was in the beginning, a civil rights movement to correct wrongs through procedure and through law. The effort was in that period, late 19th century — early 20th century, not so much to achieve collective bargaining as it was to achieve the right to get together in a union and to bring pressure on the employer to correct things that were wrong. The main procedures were not collective bargaining but the strike, the boycott, the pickets, the like that brought pressure on the employers. The campaign included also the effort to get recognized and that, in turn, led to what we call

collective bargaining, but the impetus was to say to the employer "You are working your employees too long, you are not paying them enough and the conditions of work are unsafe and unsanitary and we want you to correct these!"

Now, collective bargaining developed out of the employers response to those demands. You can interpolate by saying that he might have said "Well, if you want me to increase wages, how do I know you will not be in the next day with another demand?" Out of that conceivably developed the concept that there would be an agreement that wages would be increased but additional demands would not be made for a period of time. And out of that came the concept of collective bargaining as we know it today. If you look to the early history, to the laws relating to labor relations, the word collective bargaining doesn't come into the legislation, at least nationally, until 1932 with the Norris-LaGuardia Act although the term was being used with some frequency before then.

Legislation

The Clayton Act, which Samuel Gompers called Labor's Magna Carta doesn't mention the words collective bargaining. That law was passed because the Supreme Court held, in the Danberry Hatter's case, that labor was subject to the anti-trust laws of 1890. That decision was made in 1904 and labor mounted a campaign to get itself exempted from the anti-trust laws. It succeeded after Woodrow Wilson was elected president with the Clayton Act in 1914. Here Congress said that the labor of a human being is not a commodity or article of commerce, and that the individual worker should have the right to organize and that that organization was not a conspiracy in violation of the anti-trust laws, nor was the use of boycott, pickets and strikes a violation of law. These were all civil rights measures. The Clayton Act was honored more in the breech by the courts than in it's observance and in 1932 the Norris-LaGuardia Act was passed, in which the Congress proclaimed that it was the policy of the United States that the individual worker who lacked the strength to compete with employers, organized in the corporate form of organization, should have the right to join together in order to achieve better conditions and that by getting together the worker should have the right to strike, to boycott, to picket, and to bargain collectively. There the words appear for the first time.

In the Wagner Act in 1935 the emphasis was on the refusal of employers to grant to workers the right to organize and to bargain collectively or to engage in concerted activities including the right to bargain collectively. In 1947, a profound change was made in the labor law, principally at the instigation of Senator Taft. In the amendment that imposed on unions, as well as employers, the obligation to bargain collectively, Congress thereby gave employers the right to bargain collectively, recognizing rather than proclaiming the change that had taken place in this concept that was a civil right incidented to the right of workers to correct conditions. Collective bargaining had developed into a critical and important part of the institutional relationship of employers and employees, as the means by which they resolved impasses or rather as the means by which they jointly agreed upon the terms and conditions of employment. At this very moment, both of those concepts and meanings of collective bargaining exist.

Collective bargaining was sought as a civil right by the Farah workers in their struggle against that company, which resulted just recently in a settlement. They were protesting against conditions they believed unfair. Out of this struggle to achieve collective bargaining, to correct the conditions, came the agreement of Farah to recognize the union, came a press conference at which labor and management were jointly represented, had their picture taken, and announced that they were about to negotiate an agreement on terms and conditions that would be mutually acceptable.

The prevalent use of collective bargaining is not as a civil right, but as an instrument of joint decision making. It has not entirely lost it's quality of being an instrument for the correction of wrongs and is intermixed constantly in the process of joint decision making with the process of complaints by employees whether they be the Farah workers, who have a very profound disagreement with their employers on such matters as the hours of their work and the working conditions, to university professors who likewise may have disagreements about their conditions but are also, and to a much greater degree, seeking collective bargaining to the extent that they do seek it for participation in the joint decision-making process. We have to understand the difference between collective bargaining in that.

If we understand that, then we can come also to recognize that the term collective bargaining means acting collectively and that going back to labor history, it meant acting collectively for the purpose of enhancing the bargaining strength of the individual workers who by themselves, had no strength. Indeed, the Norris LaGuardia Act specifically took cognizance of the fact that the individual worker does not have the strength to successfully fight the employer. To the concept of the collective action where you are talking about decision-making on matters that involve a group, the larger the group becomes, the more essential becomes the process of joint decision-making through representatives. Once you say there should be joint decision-making and the group is of any dimension, it has to be through representatives. The system that existed in colleges that had grown up before there was collective bargaining in the AFL-CIO posture was a form of representative decision-making, and I would like to suggest to this group that the issue is not collective bargaining versus the system that exists in the colleges and universities, but simply the question of the attributes and the form and the procedures of joint decision-making through representatives.

Semantics

We are using the term collective bargaining in far too narrow a sense in this respect and what we are really talking about is different styles rather than different fundamental concepts. This is evident when we reflect on the experience of the NEA and the AFT and their mutual development towards what they all now call collective bargaining. In the beginning the distinction was frequently emphasized by the use of the word union versus association, and this turns up not only in the field of education, but in other areas where collective bargaining, is developing in areas where it didn't exist before. Here, there is some hostility to collective bargaining conceptually sometimes because of the tactics that are

used by unions as distinguished from the fundamental concepts that we are talking about. I know that at one point I was asked to be on a board of arbitration in a dispute involving the AAU and the NCAA which had nothing to do with the employment relationship at all, but as soon as I was introduced to these parties, the American Athletic Union and the National Collegiate Athletic Association, I said, we have two unions calling themselves by specialized names that add up to substantially the same thing.

I would like to suggest that what we are talking about is procedure or tactics rather than collective bargaining, and I would like to suggest also that in any kind of group activity, group relationship, where decisions are to be made through representatives, there is no way to avoid collective bargaining; it must exist. There is an alternative, and that's individual bargaining. The individual can deal for himself. Part of the problem in higher education is that, at least in the professorial ranks, but elsewhere also, there is a great wish on the part of the individual to preserve his right to bargain individually on certain matters, and there is, for whatever the motivation or the justification a feeling that that should be preserved to a certain degree even as other matters might be treated in a collective way. At this very moment I am involved in the negotiations in the National Football League, with the National Football League Players Association, which is a union of football players but it also has many superstars who insist on preserving the right to bargain individually on salaries while acknowledging and requesting the right of the union to bargain collectively at least in the beginning, on other common matters of interest to the group. We have a very serious disagreement on where you draw the line between what is a proper subject of collective bargaining involving money, and what is a proper subject of individual bargaining involving money on the basic premise that a buck is a buck is a buck, whether it is negotiated collectively or individually, and it goes into the sum total at the bottom of the line. However, I don't intend to get into a discussion about football today.

The Strike

I would also like to suggest that one of the fundamental differences between what you are calling collective bargaining and not collective bargaining but assuming a group relationship nevertheless, in addition to tactics and to personalities, is this question of the strike. The strike was something that labor, in the beginning, sought as a right and indeed still seeks as a right; but it has developed also to be an indigenous part of the collective bargaining process and the question that is really posed when you ask should labor have the right to strike is more probably the question should there be collective bargaining?

There cannot be collective bargaining, that is, joint decision-making, without the right to strike and the right to take a strike. They are companion rights. Once an employer is deprived of the right to take a strike but is nevertheless asked to come to an accord on terms and conditions of employment which will then be imposed, if not accepted, the employer is losing his right to bargain collectively. Of course, if he has the right to bargain collectively and there is no right to strike, he is in very superior position with regard to the compulsion there is on him to reach an agreement. But if you say that an agreement must be

12

reached regardless, then the only alternative becomes an imposed decision and that takes away from the employer the right to bargain collectively as well as the right to take a strike. I think the lockout and the right to take a lockout are opposites only in the sense that in the one instance we are talking about the union being the agent seeking change, and in the other we are talking about the employer being the agent to seek change which he can't achieve without closing down the operations. So, we have four rights, the right to strike, the right to take a strike, the right to lockout, and the right to take a lockout in this process we call collective bargaining. If you remove any of them you don't have collective bargaining.

That doesn't mean that there must be collective bargaining. There may well be particularly in situations involving government, where the argument against collective bargaining might be more persuasive than the consequences of joint decision-making by representatives who may not be representatives at all as with subjects involving the sovereignty of the government agency, be it the state or the federal government, in the joint decision-making process. There are some very serious questions which come up, of course, in connection with private and public institutions in higher education. It seems to me that the most fundamental thing we can do at a conference like this, and I applaud Baruch College for bringing this learned group together, is to discuss these subjects.

Conclusion

I would like to suggest that the most important thing you can do in the first instance is to define these terms so that we know what we are talking about. In my judgment there is no alternative to collective bargaining or joint decision-making in group relationships where the members of the respective groups are to be given any input in the decision-making process. That does not mean that the model is necesarily the model of the trade union, as it has developed in private industry. It doesn't mean that the procedures that have been used can be taken lock, stock and barrel and transferred to the higher education sector. Indeed, one of the most impressive things that I find in my work is the degree of difference I run into. But to understand the way in which the process can be adopted and adapted to different situations, it's important to understand what the process is and what the differences are and what can be done about it. I would like to leave you primarily with those thoughts as you deliberate further on collective bargaining in higher education. I don't think there is any alternative to it if you want group decision-making. I think it exists on every campus in the United States whether or not there is a certified bargaining agent or whether or not the states will enact laws that apply certain procedures for the determination of representatives in the conduct of the joint decision-making. It exists, it exists, everywhere in different forms with different attributes. It awaits your study and your efforts at improving the process.

Collective Bargaining on the Campus —the Tip of the Iceberg

by Thomas A. Shipka
Youngstown State University

Introduction

During my three years in the faculty union movement I have detected two dominant schools of opinion among college faculty on collective bargaining. Some see it as an unnecessary evil, others as a necessary evil. A mere handful perceive it as a positive good in its short range impact on a particular campus, and its long range impact on the profession. In the two dominant schools, bargaining is viewed suspiciously as a possible or probable threat to tenure, academic freedom, faculty senates, peer judgment, and excellence in teaching and scholarship. In a word, bargaining is supposed to be "unprofessional."

In my remarks today I would like to engage these charges by reference to my experience at Youngstown State University. I would also like to offer a wider perspective in which to interpret the upsurge of bargaining on hundreds of campuses across the nation. My thesis is therefore two-fold: 1. collective bargaining is a potent vehicle to advance the legitimate professional interests of a faculty; and 2. bargaining is a sign of a new direction among college teachers which involves a re-definition of their life style and professional obligations.

Bargaining and Professionalism

Both faculty and student critics of bargaining tell us that it is inimical to the interests of students. At Youngstown State University this has not been the case. Prior to the start of our first negotiations in 1972, student leaders requested that the faculty union propose a system of teaching evaluations for our faculty. We acted favorably on this request because we believed that an effective system of evaluations would both improve the quality of teaching and enhance our job security. In conjunction with provisions guaranteeing due process, evaluations make it difficult if not impossible to discharge competent teachers. The implied protections for academic freedom are obvious. Due to our initiative on this matter a joint committee of faculty, students, and administration is currently designing an evaluation instrument for the YSU faculty which will be operational this fall.

The faculty union has likewise worked with the students to increase student representation on the Senate, to assure the openness of the university's financial records, and to exert political pressure for a breath of fresh air on our Board of Trustees. (Our Board, like so many others, has traditionally been composed of males over fifty years of age with Republican, business, and professional backgrounds). Our students have supported the faculty union quite consistently, particularly at major crisis points such as the collapse of negotiations in the spring of 1973. The union leadership has found it difficult to cope with the high turnover rate among student leaders, and concessions by the union to the

students today are not always reciprocated tomorrow. On the whole, however, I think there is general agreement on our campus that the faculty union has been a positive force in faculty-student relations.

Moving to faculty matters, critics of bargaining tell us that it erodes faculty participation in decision-making at an institution. Too often these critics exaggerate a faculty's current role in governance so that their fears of bargaining are twice illusory—they fear that it will rob them of what they never really had. I prescribe the following as a sure cure for such self-deception. The faculty senate might notify the president of the university that his services are no longer required, or it might pass a policy on dismissal which provides substantive and procedural due process for all faculty members, or it might determine that the annual salary increase will be complemented with a cost-of-living escalator. If the faculty is the real policy-maker at an institution, these Senate initiatives will surely be successful. I doubt that we have to await actual empirical data to anticipate the likely results. Individuals who prefer a dream world will find little value in bargaining, for it can never transform the faculty into the administration or the Board of Trustees. On the other hand, more realistic faculty members should realize that bargaining can increase a faculty's participation in decision-making—governance, if you will—in a variety of areas.

For instance, at YSU the master agreement injects a strong dose of democracy into departmental affairs. Faculty have a right to participate in the determination of teaching assignments, the departmental budget, curriculum, and hiring. Likewise, for the first time, they have the right to select the department chairman. When a vacancy develops in the chairman's post, the departmental faculty set the criteria for a successor jointly with the Dean, and then elect the new chairman democratically. The President of the university has a veto, but he has never exercised it, and we doubt that he will, due in part to the high caliber of those elected thus far. So too, bargaining has enabled the faculty to revise the make-up and role of department promotions committees. Indeed, the entire promotions system has been overhauled, including the composition of the university-wide promotions committee which includes for the first time a majority of elected faculty.

Turning to the University Senate, at YSU we have attempted to retain the Senate by assuring that its role complements the bargaining process. We have removed it from areas of faculty welfare including workload, salaries and fringes, grievance processing, etc. We have re-named it the "Academic Senate" and given it rather extensive power in academic areas including curriculum and degree requirements. We have also increased faculty influence in the Senate. In the new Senate the percentage of elected faculty members is increased from less than 50% originally to 70% now. So too, the Senate elects its own chairman. Thanks to a comprehensive article on faculty retrenchment in the master agreement, the Senate can now deliberate on curriculum with a minimum of worry over jobs. These reforms may seem overdue by comparison with other institutions, but for us they represent important advances for the faculty.

One of the most important contributions which faculty unions can make to the profession today is to guard against precipitous faculty lay-offs, whether via regular or *de facto* retrenchment. In too many cases these days the knee-jerk administrative response to stabilizing enrollments and economic difficulties is to

by waste the faculty. Southern Illinois University is a case in point, though similar steps have been taken at many other institutions with far less public notice. SIU is an example of regular retrenchment, the more visible form, which includes an explicit administrative decision and a follow-up plan to reduce a specified number of faculty positions. Nevertheless, although hard evidence is not readily available, understandably, more faculty may be losing their jobs today through *de facto* retrenchment than regular retrenchment. The *de facto* type involves no explicit administrative decision to lay off. It is as ruthlessly efficient as it is subtle. Perhaps its most common manifestation is found in reviews for tenure and renewal wherein senior faculty members exercise self-interest under the guise of rigorous academic judgments. To lessen the chances of their own retrenchment, or to assure sufficient funds for salary increases, senior members in such reviews are tempted to inflate standards, or nit-pick. (I know of one campus where the President recently advised his faculty that they could expect a sizeable salary increase provided that 80 faculty would be retrenched. The response of many senior faculty was reminiscent of piranha.) Both types of retrenchment betray a failure of a faculty to inject itself into a far more respectable and dignified professional role.

Rather than permit the administration to unilaterally and arbitrarily determine the need for lay-offs, or rush dutifully into the practice of academic lynch mobbery, faculty members should demand public criteria which in effect define what constitutes a "need" for lay-offs, which protect the integrity of the educational process, and which provide reasonable levels of job security. This is what we have attempted to do through negotiations at YSU. Our master agreement provides that before the administration can finalize a plan for faculty lay-offs, its tentative plan must be circulated to all departments affected, every possibility of loan, transfer, and normal attrition must be exhausted, and a joint committee of the faculty union and the administration must review the plan and hear appeals from individuals and departments affected. The regular grievance avenues are open to individuals as well.

The administration plan must take into account sound student-faculty ratios, the inevitability of some academic units to be less than self-sufficient by state productivity standards, and the balance between academic and non-academic personnel, among other factors. If lay-offs are finally determined to be necessary, a modified seniority plan is applied whereby the "last hired, first laid off" principle is followed with a possible exception to assure the continuation of a vitally needed area of specialization. Limited-service faculty go before full-service faculty, and non-tenured go before tenured. A recall list is kept so that a faculty member on layoff has first claim on vacant positions which may develop over a period of three years from the layoff.

Under this system the chances of administrative over-reaction to enrollment declines or dollar shortages are minimized. At YSU the administration sounded the alarm for layoffs in January, 1971. Our faculty responded by organizing the faculty union and negotiating a master agreement with the result that not a single full-service faculty member has bitten the dust. Our colleagues at Ohio's other institutions have been very slow to follow suit. I have observed a number of campuses in Ohio where the administration has unilaterally determined the need for faculty reductions, notified academic departments of the number of

heads to roll, politely invited the senior faculty to designate the list of victims among the junior faculty, observed dispassionately as the sentences were handed down, and innocently dismissed protests from the victims on the ground that it was the colleagues and not the administration who were the jury. And the administrations got away with it. The rationale for the original decision escaped notice altogether. Faculty in Ohio have not yet realized that bargaining is an eminently useful tool to deal with threats to job security. Yet bargaining is merely part of the solution; we desperately need an increase in the level of financial support of our universities in Ohio and across the nation. Nevertheless, bargaining is a necessary first step which leads naturally to political action at the state and national levels to improve the economic picture.

The YSU master agreement also contains a special fund to correct salary inequities. For years it was recognized that there was a disparity between the salaries of men and women faculty, between faculty members as a group from department to department, and between the YSU faculty and other state faculties. We found that these disparities could not possibly be attributed solely to market or merit factors. We therefore negotiated a $175,000 special fund to correct salary inequities. Soon after the faculty and the Board of Trustees ratified the master agreement, a joint administration-faculty committee studied the salary picture carefully and developed a complex formula, particularly generous to women faculty, which closed long-standing artificial gaps. Many women received overall salary increases in excess of 25%, and one as high as 43%. The women's movement in recent years has been particularly vocal about salary disparity and dual standards, without recognizing, I believe, that bargaining is perhaps the single most practical and effective way to achieve their goals on the campus.

If I may be permitted a further comment on our economic package, in the first year of our master agreement we received an average salary increase of 10.1%. The next highest percentage increase among Ohio's 12 state universities was 6.4% at Akron. The first year increases lifted our faculty's average salary from $12,888 to $14,195, an increase of $1,307, and our average compensation from $15,236 to $16,948, an increase of $1,712. Moreover, each of our four professorial ranks received the highest increase in the state in both dollars and percentage. In comparative standing by rank at the 12 institutions, the YSU full professors moved up one notch, the associates moved up nine notches, the assistants moved up three notches, and the instructors moved up two notches. Nevertheless, considering that we started near the bottom of the salary ladder in the state, and that electricians in the Youngstown area average $7,500 more than our faculty annually, we still have a long way to go.

The faculty union is currently engaged in negotiations on workload and efforts to secure funds for faculty research and sabbaticals, the latter having been abolished by our economy-minded state lesislature. We are confronting pressures for what many refer to as "increased productivity," which means processing as many warm bodies as possible for the least possible cost, the educational implications notwithstanding. Whether it be workload or sabbaticals, we are not likely to win the battle until our colleagues on the other state campuses join our ranks. While such a development is not imminent, the reports are more and more encouraging.

Thus far I have discussed our gains at Youngstown State University to show that collective bargaining is a sound strategy to advance the professional and economic interests of a faculty, particularly in these days of widespread retrenchment. I have skipped over many of our gains, not the least of which are strong protections for academic freedom and assurances of due process. Let me move now to my second major point, namely, that collective bargaining on the campus is part of a new direction which involves substantial changes in the professor's image of self and career.

The Tip of the Iceberg

Even though collective bargaining has spread to nearly 300 campuses, there remain sceptics who predict that it will have a short life. I believe that such persons fail to appreciate adequately the nature of the conditions in higher education today, and the radical shift in the college professor's psyche which bargaining signals. I expect that, as in New York, bargaining will mushroom into a host of related activities such as political action to such an extent that one can say that bargaining is merely the tip of the iceberg.

In the past we expected a faculty member to identify primarily with his academic department or his field of specialization. He considered his life a professional success if he taught his classes competently, kept up in his field, and published an occasional article. In the future, I believe that teaching and scholarship will be necessary but not sufficient conditions of a productive professional life. They will be complemented increasingly by service in a faculty union and its state and national affiliates as part of an on-going movement in higher education to improve the level of financing, to protect the traditional prerogatives of the faculty, and to enhance job security and income. Faculty members will escape from their studies and enter the political arena where they will strive to influence the political processes of our society in an unprecendented fashion.

The conditions which have prompted this turn of events—"politicization," if you will—have been widely noted. The universities face a financial dilemma; massive layoffs are commonplace; tenure quotas are applied in more and more states; due process is denied, even to tenured faculty; humanities programs are increasingly the victim of economy measures and the expansion of technical education; administrations are tempted to introduce cheap labor policies; real income declines as inflation romps; newly-minted Ph. D.'s are denied the opportunity to ply their professional trade, except perhaps as third class citizens on one year terminal appointments; job paranoia triggers subtle forms of *de facto* retrenchment and prostitutes peer judgment; opportunities for research dwindle with each new legislative session; and it goes on.

These objective conditions affect more and more faculty each day. Typically they try to cope with them as individuals, and typically they fail. Sooner or later they realize the need for collective action, but they resist it to the very core of their being, for collective action shocks their traditional self-reliance and independence. Faculty members who are socialists philosophically are usually anarchists psychologically. One recognizes this in the comedy of a young and brilliant Associate Professor a few years ago who attended a campus meeting on

bargaining, listened intently to the organizer's pitch, and notified his colleagues later that he was indeed impressed with the arguments for unionization but that he would never join an organization to represent him which included Assistant Professors. Faculty prefer thought to action, and discussion to decision, witness the endless chatter that marks meetings of the faculty senate. Rhetoric to the contrary, there is very little sense of community in academe. The fact that several hundreds of campuses have been organized under these circumstances is a powerful testimony to the severity of the crises which prevail in higher education today.

In increasing numbers college teachers are issuing declarations of dependence: dependence on their colleagues, dependence on legislatures, and dependence on organizations. They are descending from their ivory towers, restraining their preoccupation with the realm of thought, and learning how to process grievances. They are finally discovering that they are members of the middle class, a terrifying and humbling experience. They are reluctantly admitting the need for leaders to represent them, and grudgingly paying what they consider exhorbitant union dues. They are rubbing shoulders with public school teachers and the organized blue-collar constituency. As they issue demands in negotiations, and find that the resources necessary to meet those demands are controlled by legislative bodies, they find themselves lobbying, campaigning, and fund-raising. Slowly but surely they are recognizing that business-as-usual is suicidal, that independence is impotence, and that the ground for the possibility of power in today's world is a well-heeled organization with state and national clout.

Obviously, these activities are not yet universal in higher education. But in some parts of the nation they are routine, and in others they are just around the corner. As conditions, worsen, and they will, we can expect this trend to accelerate. Years will pass before the bulk of our nation's faculties are organized, and faculties at the four year and graduate institutions will typically change very slowly, but the course is set, in my judgment, and it is merely a matter of time.

Higher education is not the only level of education which is in dire straits. The k-12 sector continues to face serious crises, particularly in the realm of financing, and pressures for "accountability." Interestingly, the dynamics which surrounded the initial activism of public school teachers in the early '60's are being duplicated today in higher education. There is resistance to collective bargaining, organizers are labeled "unprofessional," the strike is anathema, etc. Soon enough, those who protest the loudest are matter-of-factly painting picket signs and damning the scabs who cross the picket line. Organizationally, the NEA and the AFT are radicalizing the AAUP, just as the AFT radicalized the NEA. There is intense competition for members, plenty of rhetoric, and too few staff to meet the demand.

Teacher Unity

I believe that problems at all levels of education would be solved much more effectively if all teachers would unite under a single organizational banner. At the present time the worst enemies of teachers are teachers, for we are

squandering our resources needlessly in pitched battle while our real interests are sacrificed. Public school teachers are estranged from college teachers, and the NEA, AFT, and AAUP are engaged in costly rivalries. Merger discussions between the AFT and the NEA should be resumed as soon as possible. Likewise, the AAUP and the NEA should engage in serious merger talks, for the AAUP can benefit immensely from the NEA's resources, just as the NEA can escape the tremendous financial burden that accompanies competition with the AAUP. This would all be possible if teachers would learn a very simple lesson—a teacher is a teacher is a teacher.

It is not enough for teachers to gather into a single organization. As part of strengthening the teachers' movement, it is also advantageous to pursue closer ties with organized labor. The optimum in my judgment would be full-scale affiliation with the AFL-CIO. (Needless to say, I speak on this point as an individual and not a representative of the NEA.) Teachers cannot accomplish their long range goals with a loose tie to organized labor. Whether it be strikes, or levy drives, or legislative sessions, teachers stand to gain enormously from affiliation with the AFL-CIO, if indeed they will have us. To me the most appealing aspect of merger talks with the AFT is the possibility of such a development. Historically organized labor has been deeply committed to public education and the marriage of teachers and organized labor would benefit both. From my vantage point, the NEA has failed to perceive its self-interest in its stand on the AFL-CIO, a failure that I hope will be corrected as time passes and the NEA matures as a labor organization.

Conclusion

Before getting too far afield, let me put on the brakes and re-state my main points. I think that more and more evidence indicates that conditions have emerged in higher education which require new strategies by college teachers. Bargaining is a constructive but partial response to these conditions, and bargaining will naturally flow into the full-scale politicization of college teachers. In much of this, the college teacher will be his own worst enemy, for he is embedded in a life style and a self-image which makes collective action difficult if not impossible. I feel quite confident, however, that America's college teachers will liberate themselves sooner or later, and I think that this will be good for the profession, for education, and for the nation.

Differing Faculty Tasks; Differing Faculty Structure; Differing Collective Bargaining

by SANFORD SCHNEIDER
Director of Development, Burlington County College

I should like to thank my friend and host, Maurice Benewitz, for inviting me to participate in the National Center's second annual conference. At the conclusion of last year's conference, the point was made that there were no representatives from two-year colleges to provide input to this discussion. Bruce MacDonald and I are here, therefore, as the community college representatives; faculty and administration respectively.

While I am honored at the invitation, I also feel a tremendous responsibility since the differences among and between the 150 two-year college faculties with bargaining units is so vast, that I hope we are able to bring some meaning to this discussion. To bring my own personal involvement in collective bargaining into sharper focus, let me say that for the past four years, I have represented the Burlington County College Board of Trustees in negotiations with the college's Faculty Association (NJEA/NEA).

Living through mediation and fact-finding on three separate occasions has given me a deep appreciation of the futility of these processes in public sector. One of the distinguished CUNY faculty members, Professor Samuel Ranhand, served as a mediator during our 1973 impasse situation. Despite his excellent skills, little was accomplished during that exercise. I shall attempt to elaborate on these procedures later.

In looking over the title of my talk, the reader will no doubt be struck by the repeated use of the word, "differing". There is little doubt that differences do exist. However, Joe Garbarino said it very succinctly when he stated that "Each bargaining relationship has its own history and in a real sense is unique, but some generalizations can be made."[1]

I will attempt to point out the various differences on the community college scene while at the same time indicating where the process remains constant regardless of what negotiating level we are talking about. Collective bargaining in higher education is a particular process and its applicability is universal.

Two-Year Contracts

The historical development of community colleges has a bearing on the collective bargaining process and why certain developments in two-year colleges are inherently different. The education establishment in general and in higher education in particular, is still reeling over the impact generated by the proliferation of community colleges during the last decade. No real assessment as to the impact of the public two-year college has yet been made. It is a phenomena still searching for an identity although many labels have been ascribed by both sup-

[1]Joseph W. Garbarino, "Faculty Unionism: From Theory to Practice," *Industrial Relations*, (Vol 11), Berkeley: Institute of Industrial Relations, 1972, p. 3.

porters and critics. The parallel of the emergence of the community college as a force in higher education and the growth and spread of collective bargaining in higher education is a fascinating "coincidence" about which we may speculate. While it may be argued that economics, the public's outcry for accountability, declining birth rates and an oversupply of teachers all contributed to the growth of faculty unionism, the emergence of the community college cannot be overlooked as a factor. An examination of the tables published in the Chronicle of Higher Education (issue of November 26, 1973) [1] graphically illustrates the comparative number of college faculties with contracts at four-year -40 and two-year -116 institutions. One wonders whether the two-year college acted as a catalyst in the acceleration that brought widespread collective bargaining to higher education. The spread of unionism in higher education was a reality whose time had come. To a large extent, the community colleges acted as the vehicle on which the idea came to general acceptance. (The CUNY experience is unique and brings into play another whole set of circumstances.)

Although significant organization of public school teachers by the unions had taken place in the early sixties, the movement had no real impact upon the nation's colleges at that time. The gulf between college faculty tasks and structures was too great to leap the chasm from the public school sector. Structure and the degree of faculty involvement varied from one campus to another but still there were traditions to be followed. Faculty participation in senates, promotion committees and other academic forums was taken for granted and to different degrees was a way of life. The academic professional life was aimed at attaining excellence in one's own discipline through research and writing. The logical extension of this process was to make the professor an independent academic entrepreneur who could sell himself. In higher education, the concept of employer and employee was foreign.

The community college, whether it is a downtown urban institution or one that enjoys a sprawling suburban campus has come into being primarily as a post-secondary teaching institution. If, in its search for identity, the community college faculties don't come to grips with this concept, then they will wander in search of an identity for a long time.

Faculty as Teachers

The idea of the community college faculty member as a teacher first and foremost, brings with it a host of implications that ultimately relate to those items that one sees incorporated into collective agreements. As a teacher, one must concern himself with such tasks as student contact hours, number of course preparations, class size, work load formula, length of the teaching day, etc. These tasks, while having some relevance both to the public school sector and to four-year institutions, nevertheless developed into a new set of circumstances. This newly developing set of circumstances coupled with the ways in which community colleges were being created, organized, and staffed made the

[1] Maurice Benewitz, "Chronicle of Higher Education," (Vol. IX), Washington, D.C., 1973, p. 8.

faculties prime candidates for unionization.

Karl J. Jacobs in his chapter in Tice's book, characterizes some important differences in community college organization:

- lack of academic tradition
- predominance of secondary school teachers
- personnel policies patterned after secondary schools
- board members who had public school experience
- an inferior identity in the hierarchy of academe[1]

While I don't totally agree with all of Jacob's points, there is a great deal of truth in what he says. The New Jersey experience supports several of the points made by Jacobs. By law, the county superintendent of schools is a member of the Board of Trustees in each of the sixteen county colleges. Certainly boards have looked to the county superintendent as the expert who would provide the leadership and advice in creating educational policy. I know of two former county superintendents of schools who are currently serving as presidents of community colleges in New Jersey.

James Begin, Associate Research Professor IMLR, Rutgers University, my good friend and colleague, has made an extensive study of collective bargaining in New Jersey. In a recent article, he said that ". . . in the short history of the county colleges there had not been sufficient time in which to develop a tradition of faculty participation in governance."[2]

In the wake of these differing tasks, structures and outside pressures, there can be little doubt concerning the movement toward collective bargaining in the community colleges. The creation of the community colleges by local elements using administrators largely recruited from the ranks of public schools and the industrial sector seemed "right" at the time, and was of course the quickest way to accomplish the task. Once the initial tasks of opening the college and getting the program underway was accomplished faculties began to assess their situation.

Again it is worth noting Begin's comments, "Of particular significance was authoritarianism within the college's administration. This behavior, demonstrated through unilateral decision-making by administrators, was often characterized by the faculties as being arbitrary as well."[3]

Trustees

The membership of local community college boards of trustees generally looks to the public school as a model in their relationship with teachers as employees. County governing leaders in community college districts are obligated to draw from the tax-paying constituency for their board members. Too

[1]Karl J. Jacobs, "Collective Bargaining in Community Colleges, *Faculty Power: Collective Bargaining on Campus*, Ann Arbor: The Institute of Continuing Legal Education, 1972, p. 68.

[2]James P. Begin, "The Emergence of Faculty Bargaining in New Jersey", *Community and Junior College Journal*, (Vol. 44), Washington, D.C.: Publisher Services, Inc., 1974, p. 18.

[3]*Ibid.*

often, the experience factor with faculty in colleges and universities is lacking. Since most boards set the policies and hire administrators, the results are obvious in terms of attitudes toward faculty.

Over a period of years, a sizeable group of senior faculty emerges at four colleges and universities through longevity and promotion. The established peer evaluation through departmental or promotional committees has had time to emerge. Economic well-being and the opportunities for advancement depend upon one's own colleagues and intellectual ability. The community college structure has placed the mechanics of evaluation, promotion, and tenure largely in the hands of administrators. These administrators are by no means colleagues in the sense of peer evaluative committees. In an article published last year, Charles Ping stated that "Like it or not, administrators are not simply faculty who have a different set of responsibilities. Administrators serve by managing. This role is being magnified and defined with more precision through collective bargaining and it seems clear that collective bargaining will be a causal agent in this emerging trend." [6]

Evaluation of Faculty

Community college administrators are by and large chiefly responsible for evaluating faculty performance. The criteria used for faculty evaluation, promotion and tenure often was not based upon the usual academic yardsticks found in higher education. Community college faculties became aware of these procedures fairly soon and began to balk at the methods and results. There were few avenues available to protect job security, academic freedom and other conditions of employment. Governance plans, while they may have existed in some institutions, had no real power and operated outside of the real decision-making process. Organization and collective bargaining offered the only real alternative to community college faculty to gain security. State legislators were making the opportunities even more attractive by passing legislation permitting public employees to organize and bargain collectively. The unions and teacher associations had the machinery in place since local NEA officials were already working with the public school teachers in many districts. The union local or association field office merely had to designate a "higher education coordinator" and move right in on the local community college. Recognition was readily granted in most places. The hardest fights were in the area of who was to be the exclusive agent and unit determination. Local boards generally did not dispute the fact that the faculty had a right to organize and bargain. The organizational fights between AFT and NEA and to a much lesser extent AAUP were the only real contests at the local level. Deciding who was a supervisor centered around the ambigous role played by departmental and divisional chairmen. Court decisions and rulings by state public employment boards went in different directions depending upon local ground rules and state laws. The confusion over whether the chairmen were peers or supervisors epitomizes the uncertain character of the

[6] Charles J. Ping, "On Learning To Live With Collective Bargaining", *The Journal of Higher Education*, Columbus: Ohio State University Press, 1973, p. 108.

community college administrative structure. Faculty were not really sure who rated their performance and ruled on tenure and promotion; the chairman, deans, president or the board. Who had the real power and who was merely a rubber stamp? The administrative structure was struggling to emerge and no one really was certain. This uncertainty bred suspicion and mistrust when contracts weren't renewed and promotions stalled. The public schools had their principals and the superintendent. Colleges and universities had long established practices and whether the power was in the hands of a faculty committee or in the dean's office at least one knew where the power resided.

Contract Content

Collective bargaining as it now exists at many community colleges is a patchwork of methods, techniques and models. Most are borrowed from the industrial model and or the public school experience. The identity crisis in the collective bargaining model is as apparent as that of the community college's overall search for a place in the academic mainstream. Many supporters see the community college as the new boy on the street who is trying to be all things to all people. Obviously this approach is doomed to failure. So is the rapid development of a collective bargaining model that attempts to solve everyone's problem. No bilateral agreement will guarantee job security, grant tenure and promotion, escalate salaries, provide for faculty decision-making and maintain management rights. Collective agreements that include long lists of "guarantees" for both parties eventually please no one and disappoint everybody. Collective agreements, in my view, need to include a minimum number of articles: usually those items known as "bread and butter issues." Salaries, fringes, leave policies, work load, teaching time and a grievance procedure to name a few that are the most obvious. Long contracts covering a multitude of extraneous issues are not really the answer for higher education. Many agreements came into being at a time when to throw in the entire "shopping list" seemed to be the only way to achieve some immediate goals. This is certainly not the model for the community college. The constraints and inflexibility accompanying such lengthy and detailed agreements will strangle the inherent innovate nature which could be the strength of the community college phenomenon. The community college needs to be free to experiment with schedules, courses to be offered and a variety of places where teaching can be most effective. Legally constraining contractural agreements are not terribly conducive to the kinds of arrangements that may be required to strengthen a particular community based teaching-learning situation. Collective bargaining is a particular process that is not very consistent with joint decision-making or common consent that is often utilized in an academic environment.

Alan Pifer, President of the Carnegie Corporation in remarks delivered recently before the annual convention of the American Association of Community and Junior Colleges called for community colleges to ". . .be more flexible than four-year colleges and universities, better able to experiment with new curricula and ways of meeting new community needs." Present models of collective bargaining currently emerging in higher education are inhibiting community colleges from fulfilling the role as outlined by Mr. Pifer.

A dual system of a collective bargaining agreement and a plan for college governance and joint decision-making must emerge simultaneously as a possible solution to the community college's dilemna. Such a situation is beginning to evolve at Burlington County College. At present it is a bit premature to comment specifically, however more information may be avialable at the time this meeting takes place. If this proves to be correct, then I will be privileged to distribute copies of the college's plan at that time and comment accordingly.

"Differing Faculty Tasks: Differing Faculty Structure: Differing Collective Bargaining?"

by BRUCE MACDONALD
Executive Director, Associated Community College Faculties

Collective bargaining in the upstate New York community colleges is, and will continue to be, an arena of experimentation. The bargaining at the State University of New York and the City University of New York will continue to be marked by a "status quo" result with little, if any, change in "collegial" areas such as faculty evaluation, the election of Department Chairmen, the determination of curriculum, etc.

In order to be more precise as to the context of this discussion, a few definitions are in order.

1. Upstate Community Colleges - Twenty-seven public community colleges in New York State, outside of New York City and Long Island.
2. ACCF - Associated Community College Faculties, an independent statewide association serving as the collective bargaining agent for fifteen upstate community college faculties.
3. Taylor Law - The New York State Law (Ch. 392 of the Laws of 1967 as amended) that gives public employees the right to bargain collectively.
4. PERB - The New York State Public Employment Relations Board, the state agency created by the Taylor Law to administer all the facets of the Taylor Law.
5. Huntington Decision - A court case, Court of Appeals March 16, 1972 (30 NY 2d 122) in which the court held that absent specific statuatory prohibition, a Board of Education must negotiate all terms and conditions of employment.

The upstate community colleges have primarily three-way financing-local sponsor contribution, student tuition, and state aid. Each of the colleges has its own Board of Trustees and the local sponsors for the most part are county governments. Three exceptions are: Jamestown Community College, sponsored by the city, and Auburn Community College and Corning Community College, sponsored by city school districts. Because of the dual structure the question - Who is the employer? has raised significant probiems. At Jefferson Community College the Faculty Association had two separate collective bargaining agreements for the academic years 1971-1973. One agreement was with the Jefferson County Board of Supervisors and covered economic items. Each agreement had a separate grievance procedure; the County's ending with a County Grievance Board and the Trustees' ending in advisory arbitration. For the second year of the agreement, the Faculty Association agreed to a salary raise that was solely a merit increment as defined in their Supervisors' agreement:

> "ARTICLE VI SECTION 2. MERIT INCREMENTS.
>
> All increments to be based on merit as determined by the Administration and the Board of Trustees. Those denied increments shall be given the reasons for such denial in writing. To qualify for an increment, a faculty member must have

been on the job for at least 50% of the previous appointment year."

The previous collective bargaining agreement contained the same provision which represented about ten years of previous practice at the College. The President of the College and the Board of Trustees had interpreted the provision as meaning that if a faculty member did not merit an increment, he was not rehired. Thus everyone who was employed the following year did receive an increment.

PERB Decision

In August 1972, midway through the bargaining agreement, the County informed the Trustees that the County would only authorize enough funds for one-half of the increments determined by the administration. The Trustees protested and the Faculty Association filed an improper practice charge with PERB. The County filed a court action trying to prevent PERB from hearing the case. The County lost and refused to participate in the formal PERB hearing. The PERB hearing officer and the full PERB Board found in favor of the Faculty Association and ordered the County to provide the additional funds (approximately $18,000) to pay all the increments (6 PERB 3063, 6 PERB 4536). As of this time, the County has lost one court appeal and has agreed to pay all the monies in question.

An unusual aspect of this case was that the Board of Trustees entered the case as an intervenor before PERB and supported the Faculty Association's position against the County. Working with fifteen community colleges on a daily basis for three and a half years, this was the only instance where I saw the Faculty Association's position against a local sponsor publicly supported by the Trustees. More frequently have I seen the local sponsor support the faculty against the Trustees and the Administration.

This only begins to point up some of the complexity in the power situation at the community colleges. The local sponsors being elected politicians are generally more responsive to faculty pressures than the Trustees who are appointed (five appointed by the sponsor(s) and four appointed by the Governor). But, again, the situation varies from college to college. Auburn Community College, for example, is an institution where the local sponsor has delegated virtually total responsibility for bargaining to the Trustees and no one from the school district has attended or sent representatives during the bargaining of the last three agreements at the College. At Finger Lakes Community College, on the other side, the sponsoring County has controlled the bargaining process without permitting meaningful input from the Trustees. In addition, the County within the past six months has effectively been assuming more authority in the daily administration of the college.

The problem at Jefferson with two agreements occurs at only one other community college in New York, Niagara Community College, but they serve to illustrate the extreme situations which can arise because there has been no extensive litigation to determine who is the employer in the community colleges.

Bargaining Scope

The Huntington Decision referred to earlier is the basic legal guide to the scope of bargaining in New York. PERB ruled in the Oswego Case (5 PERB 3023) that the length of the work year is a mandatory subject of negotiations. This decision has enabled the ACCF to negotiate the academic calendar at Erie Community College and other institutions. At Erie, the County and the Administration took the position that the calendar was not negotiable. By filing an Improper Practice Charge, ACCF was able to force withdrawal of a calendar previously voted by the Trustees and subsequent negotiations resulted in successful agreement on the academic calendar for 1973-74 and 1974-75.

In some instances, PERB has ruled certain areas as non-mandatory subjects of negotiations such as:

1. A reduction in force (4 PERB 3704)
2. Qualifications for employment (4 PERB 3725)
3. Qualifications for promotion (4 PERB 3725)
4. Class size (4 PERB 3725)
5. Matters regarding excluded job titles (4 PERB 3725)

PERB has softened the blow for the employee organizations in these areas by ruling that the impact of these non-mandatory subjects is a mandatory subject of bargaining.

An area of bargaining where there has been some interesting experimentation is job security. At Genesee Community College the current agreement between the Genesee Faculty Association and the County Legislature with the Board of Trustees provides for a continuing appointment:

> "ARTICLE V. Sec. (I)3.
>
> A continuing appointment will be granted in the year of reappointment following the conclusion of the final probationary appointment. Individuals granted continuing appointment shall hold their respective positions during competent professional service and conduct for a period of four (4) years following which such status shall be subject to review by an appropriate committee of Administrators, recommended by the College, which Committee shall make recommendations to the Dean as to whether or not continuing appointments should be renewed for successive periods."

This provision of the agreement is subject to a grievance procedure terminating in binding arbitration.

Schenectady Community College Faculty Association and the County of Schenectady leave the following provisions in their bargaining agreement:

> "ARTICLE VI. Section IC
> Continuing Appointment Procedures
>
> Between September and November 1 of the fifth full year of service by a staff member, who has held a position of academic rank during each of the preceding four years, his immediate supervisor shall prepare a recommendation as to whether or not the staff member should be given a continuing appointment. This recommendation, together with appropriate background data, shall be forwarded to a Committee designated by the President for that purpose. The Committee shall make

its recommendation and forward it to the Dean of Faculty, together with the recommendation of the immediate supervisor, prior to December 1. The Dean of Faculty shall forward all of the material, together with his own recommendation, to the President, who shall make a recommendation to the Board of Trustees for action at its January meeting. The staff member shall be informed of the action prior to February 1. All recommendations and materials prepared for this action shall be placed in a separate file in the Office of the President. There shall be no appeal of the decision by the Board of Trustees.

Between September 1 and November 1 of the fifth full year of a continuing appointment, the same procedure as outlined in Paragraph 1 shall be followed for each staff member holding such an appointment."

The article then contains the following *further* limitations:

"Section III. Paragraph 1.

Notwithstanding any provisions of Section I or II of this Policy, the total number of continuing and career appointments held be staff members shall not exceed sixty percent of the total number of positions, vacant or otherwise, as listed in IA and IIA and provided for in the budget of that year.

The Board of Trustees reserves the right to waive any of the limitations in this Section if it deems it to be in the best interests of the College to do so."

Career appointment is the same type of appointment as the continuing appointment except that it is for the non-teaching professional staff.

Under this agreement the non-renewal of a continuing or career appointment is not subject to binding arbitration. The final decision is reserved to the Board of Trustees.

Two objective observations can be made for each of these colleges relative to the effect of these job security provisions. At Genesee Community College, since the institution of these provisions:

1. There has been no significant change in the low faculty turnover rate;
2. Faculty morale is high at the College since the institution of these agreement provisions.

At Schenectady Community College:

1. The faculty turnover rate has been the highest in the state for the last two years;
2. Faculty morale is at the lowest point that I personally have ever seen at any institution.

Exit interviews conducted by the Schenectady Faculty Association over the last two years indicate that the primary factor causing people to leave is the absolute lack of job security at the College.

Evaluation

Another area of experimentation is the area of faculty evaluation. There has been little, if any, control by upstate community college faculties in the area of faculty evaluation, either for retention or promotion. The selection of Department and Division Chairmen has been almost exclusively the preogative of the College Presidents. Participation in Search Committees has been minimal.

However, with the passage of the Taylor Law, the Faculty Federation at Erie Community College negotiated a major role for faculty members in the evaluation of professional personnel for retention and promotion. The Faculty Association at Ulster Community College negotiated the annual election of Division and Department Chairman by their constituent faculty members, where previously appointments to the positions were made by the President. At Orange County Community College, the Association negotiated the first guaranteed faculty participation in certain Search Committees. Auburn Community College Faculty Association has developed and negotiated an evaluation procedure for faculty which involves a college-wide Joint Committee, including elected faculty and appointed administrators with the faculty constituting the majority of the Committee.

Generally, there is little guarantee of Faculty Association participation on committees in these agreements. The major reason for this is that among the ACCF affiliated campuses virtually all Associations have better than ninety percent of bargaining unit personnel signed up as members. The majority of the campuses do not have the equivalent of a Faculty Senate and, as a result, the Association often become the forum for meaningful discussion of college-wide issues.

Many of the moves in the upstate colleges towards collegiality are a direct result of the power situation I described earlier in this paper. In *Professors, Unions, and American Higher Education*, by Everett C. Ladd, Jr. and Seymour Martin Lipset, the following observation is made on page 98:

> . . . . . In public institutions the legislature has considerable economic power, including that to set salary scales. Ironically, collective bargaining appears to be reducing the extent to which decisions are made at the campus or even university-wide level. Since the ultimate power to decide on a wage and working conditions package is in the hands of state government in public institutions, the university administrators and trustees are increasingly bypassed by the unions in favor of direct negotiations with the state officials. Conversely, as noted, the traditional role of university administrators as lobbyists for more funds and higher salaries for the faculty is curtailed, for with collective bargaining they became agents of the employers' side of the negotiations. This change in role necessarily widens the gap between administration and faculty.

This observation with some modifications is also true of the upstate community colleges. As already indicated, the legislative body most community colleges deal with is County Government. The following factors have led most of our ACCF Associations to deal directly with the sponsor:

1. County Legislators are elected for two-year terms;
2. The size of County Governments;
3. The overwhelming concern of County Legislators in bargaining is salaries;
4. Most County Legislators want to know more about how the college is run;
5. County Legislators have been more receptive to greater faculty involvement in collegial matters than have college Administrators and Board of Trustees;

6. County Legislators provide an additional effective means of review of actions by the College Presidents.

The importance of the two year term for County Legislators, plus the size of the County Legislative bodies cannot be overemphasized. Candidates for County office always need campaign help in the form of people more than money. People to ring doorbells, stuff envelopes and do all the little, tedious and time consuming jobs. The smaller governmental unit makes the task of influencing political leaders more manageable. Even at Clinton Community College where there are only twenty-seven full-time faculty members, the amount of political activity that was generated by the Faculty Association members resulted in a collective bargaining agreement that gave them a large salary increase, tenure, binding arbitration and some beginnings in the collegial areas and the college is only five years old.

Without exception, when one of the ACCF local affiliate officers ask me for recommendations on the best way to prepare for negotiations I have two:

1. Make sure grievances have been filed, or are being filed, concerning any working conditions that are problems.
2. Begin contacting County Legislators to present the Association's point-of-view.

The size and nature of the community college sponsors, plus the organizational loyalty of the faculty members are, I believe, that main factors guaranteeing the continuance of the experimental arena at the community college level in New York State. The United University Professions at the State University of New York, with about four thousand members out of a potential seventeen thousand, faces the almost impossible task of confronting the State Legislature. The Professional Staff Congress at the City University of New York, with about six thousand members out of a potential sixteen thousand, has more potential for creating some experimentation because of the urban setting of the University and the organizational loyalty which has grown significantly since the merger of the two predecessor organizations, the Legislative Conference and the United Federation of College Teachers.

Over the next few years, the upstate community colleges will continue to demonstrate that collective bargaining is and will continue to be an effective instrument for change and improvement in higher education.

Addendum

EXCERPT FROM AUBURN COMMUNITY COLLEGE FACULTY ASSOCIATION'S CONTRACT

ARTICLE IX - EMPLOYMENT POLICIES

Section Three-Evaluation Procedures

"These procedures are designed to evaluate teaching effectiveness and to insure that both Faculty and Administration will strive to improve the quality of teaching.

3.1 Evaluation Reports

A. After a member has been observed by members of the Departmental Evaluation Committee, the Faculty Member shall discuss informally with the

member of the Committee his/her observations and suggestions. A written evaluation report shall be drawn up and signed by the Faculty Member and the member of the Evaluation Committee. The Faculty Member shall be permitted to take exception, reply, or add his/her own comments to any portion of such report which shall then be submitted to the Dean of the Faculty, and to the College-Wide Evaluation Committee in the case of promotion and continuing appointment. Such reports shall be kept on file by all parties concerned.

B. Individual personnel files shall be confidential. Any individual shall have the right to review his own personnel file in the appropriate office at any reasonable time and he may be accompanied by an advisor of his own choice. Information from previous employers and former professors shall be privileged and not available to the individual.

3.2 College-Wide Evaluation Committee in matters concerning promotion and continuing appointments.

A. Composition—The committee shall be made up of seven (7) members of the Faculty, four (4) elected by full-time faculty and three (3) appointed by the President. Members shall be at the rank of Associate Professor and above. Terms shall be for three (3) years and will be overlapping. Elections and appointments shall be before May 1. Members will take office on May 1. Two alternates shall be selected, one elected by the full-time faculty and the other appointed by the President, also for a period of three (3) years. Should a standing member of the Committee be eligible for promotion or for continuing appointment during his/her three (3) year term, he/she shall step down from the committee for the whole year during which he/she is being considered, and the appropriate alternate shall then take office for that year.

B. Responsibility—The College-Wide Committee shall receive pertinent data from the candidate's Department Chairman and will meet with the Chairman to hear his/her evaluation of the candidate. The Committee shall be responsible for evaluating all candidates for promotion to the ranks of Associate Professor and Professor, and for continuing appointment, and shall recommend action to the Dean of the Faculty. Such evaluation and recommendation regarding promotion shall be in writing and shall be forwarded to Dean by March 1.

3.3 Departmental Evaluation Committee

A. Composition - Each Department shall have an evaluation committee consisting of the following members:

1. The Department Chairman (where appropriate) will serve as chairman of the committee.

2. Two members of the department (where appropriate) elected annually by the department except that no Faculty Member requesting reappointment, continuing appointment, or promotion in a given year may serve on this committee. All members of this committee shall be at the rank of Assistant Professor or above. Elections shall be held before May 1 and members shall take office on May 1.

B. Responsibility - The committee shall recommend to the Dean of the Faculty in case of term reappointments, and to the College-Wide Committee on matters concerning appointments and promotion of its department members.

C. Classroom Observations

1. In the first year, and any year in which the Faculty Member is being considered for promotion and/or continuing appointment, there shall be minimum of one observation by the Chairman and one observation by each of the other members of the Committee.

2. In the interim years before continuing appointment there shall be a minimum of two observations a year, one of which shall be by the Department Chairman.

3. In the years after continuing appointment, there shall be a minimum of one observation a year by one member of the Departmental Evaluation Committee except when the faculty member is being considered for promotion.

3.4 Criteria for Evaluation - When evaluating faculty members, administrative personnel and faculty should consider the following factors:

A. Teaching Effectiveness - This shall be measured by:

1. Peer evaluation as provided for in the Departmental Evaluation Committee procedures.

2. Student evaluation

a. Student evaluation will be conducted with an instrument approved by the College-Wide Committee and the Dean. The Committee and the Dean shall be responsible for reviewing the evaluation process.

b. The Committee and the Dean shall submit a report on a suggested instrument to the Departments by November 1, 1972. A target date for the incorporation of this instrument shall be the spring semester of 1973 when two (2) sections of students will evaluate each faculty member.

c. Student evaluations shall be carried out by all faculty members in at least three (3) sections each academic year. Copies of the results will be forwarded by the Department Chairman to the Faculty Member and the Dean.

B. Mastery of Subject Matter - Shall be included within the process of peer evaluation.

C. Professional Growth - As evidenced by advanced study, research, publications, study-oriented travel, institutes, conferences, and membership in professional organizations. A written report of all the above items shall be kept on file by the Dean of the Faculty and the Department Chairman. It shall be the responsibility of the individual faculty member to furnish information for updating such reports.

D. College Service - As evidenced by participation in college-wide and departmental professional activities such as committee work and advising extracurricular projects.

E. Community Activities - As evidenced by participation in community groups which call upon the Faculty Member's professional talents to act as consultant, advisor, lecturer, board member, and other profession related services.

NLRB and Faculty Bargaining Units: The Charting of an Uncharted Area

Remarks of RALPH E. KENNEDY
*Member National Labor Relations Board**

When the National Labor Relations Board decided in 1970 to reverse nearly 20 years of precedent and assert jurisdiction over private, nonprofit colleges and universities, we acknowledged that we were venturing into a "hitherto uncharted area."[1] In the intervening 4-year period, the academic community has proven to be most cooperative in providing us with a sufficient flow of cases to remedy this confessed deficiency in our expertise.

For example, since our assertion of jurisdiction in the *Cornell* decision, the Board has conducted more than 200 secret ballot elections in our nation's educational institutions to determine whether the employees desired union representation. While a majority of these elections were run for nonprofessional employees such as clericals, maintenance personnel, and cafeteria workers, nearly 20 percent involved professional employees—primarily faculty members. In both categories, a participating labor organization received majority support in slightly more than 50 percent of the elections.

A significant number of these elections were preceded by disagreement among the parties regarding precisely which employees would be eligible to vote—a disagreement commonly referred to as a dispute over the "appropriate bargaining unit." When the parties are unable to reach agreement, the Board has the task of defining the appropriate unit. I think it is accurate to say that one of the most difficult and time-consuming responsibilities undertaken by the Board since its assertion of jurisdiction over colleges and universities has been to develop a body of law which will provide guidance to the parties in resolving their differences with respect to faculty units.

While I do not speak for my NLRB colleagues, I think that it is correct to observe that in the post-Cornell cases the current Board Members are in substantial agreement as to the ultimate goal to be achieved—namely, the establishment of a framework within which a rational system of union representation and collective bargaining may operate; a framework which will provide faculty members with a meaningful voice in determining their conditions of employment, without inhibiting the ability of our colleges and universities to perform their educational functions.[2] Given the complexity of

*I wish to acknowledge the able assistance of Jeffrey A. Norris in the preparation of these remarks. Mr. Norris received a J.D. degree from the Cornell Law School in 1970, and is a member of the Connecticut Bar. Before joining my legal staff in 1972, Mr. Norris was engaged in the private practice of law in Connecticut.

[1] *Cornell University*, 183 NLRB No. 41, slip op. p. 18 (1970), overruling *Trustees of Columbia University*, 97 NLRB 424. *See also* NLRB Rules and Regulations and Statements of Procedures, Series 8, as amended, Sec. 103.1.

[2] As the Board stated in *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962): In performing this function [unit determination], the Board must maintain the two-fold

this task, it is perhaps understandable that the unanimity of purpose which the Board Members share in terms of an ultimate goal to be achieved does not always produce agreement as to the specific means and methods for best achieving that goal. Consequently, we have proceeded cautiously on a case-by-case basis, and have gradually come to realize that not all of the unit principles developed in an industrial context are capable of being transplanted to academic institutions.

Accordingly, I would like to discuss with you today recent NLRB decisions involving college and university faculty bargaining units in an effort to identify some of the problems which the Board has encountered in attempting to apply traditional unit criteria in an educational setting.

I. Unit Scope

In defining any bargaining unit, the Board must consider both its scope and its composition—scope referring to which group of employees shall be included, and composition referring to precisely which employees fall within that group. As we shall see, most of the problems to date have involved unit composition, although recent cases suggest that we can expect troublesome issues involving unit scope.

The principal reason underlying the relative absence of unit scope issues from our university cases thus far, I suspect, is that in most instances the parties have already reached agreement on this issue. Typically, the parties stipulate that a university-wide unit, encompassing one or more campuses, is appropriate. In such cases, it is Board policy not to disturb the parties' agreement unless it contravenes the requirements of the National Labor Relations Act. Special problems posed by requests for separate units for professional schools—law, medicine, dentistry—will be treated later in connection with unit fragmentation.

In *Fairleigh Dickinson University*,[1] the Board was squarely faced with a unit scope issue. There, the University operated three major campuses at three separate geographical locations. An affiliate of the American Federation of Teachers petitioned for a unit limited to the faculty of one of the three campuses, while an affiliate of the American Association of University Professors sought representation in a unit encompassing the faculty from all three. In determining whether the employees' interests would be better served by a single campus unit or a multi-campus, university-wide unit, the Board noted that

objective of insuring to employees their rights to self-organization and freedom of choice in collective bargaining and of fostering industrial peace and stability through collective bargaining. In determining the appropriate unit, the Board delineates the grouping of employees within which freedom of choice may be given collective expression. At the same time it creates the context within which . . . collective bargaining must function. Because the scope of the unit is basic to and permeates the whole of the collective bargaining relationship, each unit determination, in order to further effective expression of the statutory purposes, must have a direct relevancy to the circumstances within which collective bargaining is to take place. For, if the unit determination fails to relate to the factual situation with which the parties must deal, efficient and stable collective bargaining is undermined rather than fostered.

[1] *Fairleigh Dickinson University*, 205 NLRB No. 101 (1973).

policies regarding wages, hours, fringe benefits, hiring, termination, advancement, and attainment of tenure were all administered on a university-wide basis. The University Senate which formulated academic policy was composed of faculty representatives from all three campuses. On the entire record in that case, it was concluded that there existed a "substantial community of interest shared by all of the faculty, regardless of their campus location," and that a unit limited to a single campus was inappropriate in view of the AAUP request for an overall unit.[4]

While not a member of the panel which decided *Fairleigh Dickinson*, I am in full agreement with the result reached. With virtually all of the faculty's working conditions administered on a university-wide level, it seems doubtful that collective bargaining on an individual-campus basis could ever be productive. The decision's philosophical preference for larger faculty units is important, in my opinion. A large unit, it seems to me, provides maximum flexibility for making adjustments during the bargaining relationship—as, for example, the introduction of local campus bargaining over local issues—while avoiding the pitfalls—such as "whipsawing"—frequently occasioned by separate and competing bargaining agents.[5]

II. Unit Composition

As mentioned earlier, issues of unit composition have been raised more frequently than have issues of unit scope. As a general proposition, we strive to include in a single faculty bargaining unit all members of a university's professional staff who either regularly teach, or who are engaged in supportive activities clearly associated with the educational process, and who otherwise share a community of interest in their working conditions. As before, however, consensus on the general does not always breed consensus on the specifics.

1. Are Faculty Members "Employees"?

It has been argued in a number of cases that no faculty bargaining unit can ever be "appropriate" because full-time faculty members are not "employees" under our Act. It has been contended that all faculty members are supervisors, managerial employees, or independent contractors.[6] Unlike some state labor statutes, the National Labor Relations Act does not afford representation rights to these classifications.

[4] *Fairleigh Dickinson University*, *supra* note 3, at slip op. p. 7; *Compare Florida Southern College*, 196 NLRB 888, 890 (1972), where the College's request to include instructors at a second facility was denied in view of (1) the absence of any real day-to-day supervision or substantial interchange of instructors, (2) the facility was located 50 miles from the main campus, and (3) no labor organization sought to represent both facilities in a single unit.

[5] *See* McHugh, "Collective Bargaining with Professionals in Higher Education: Problems in Unit Determinations," 1971 *Wis. L. Rev.* 55, 83.

[6] *C. W. Post Center of Long Island University*, 189 NLRB 904, 905 (1971); *Fordham University*, 193 NLRB 134, 135-136 (1971); *Manhattan College*, 195 NLRB 65, 66 (1972); *Adelphi University*, 195 NLRB 639, 647-648 (1972); *New York University*, 205 NLRB No. 16, slip op. pp. 3-7 (1973).

The contention that all faculty members are supervisors finds its genesis in the often-cited concept of "collegiality" or "shared authority" in which all segments of a university community—administration, faculty, and in some instances students—participate either individually or through representatives in the university's decision-making process. To the extent that faculty members participate in decisions affecting university policy and personnel matters, it is argued, they are exercising supervisory authority and are, in effect, sitting on both sides of the bargaining table.

The Board's response to this contention, as initially set forth in *C.W. Post*, has been that whatever "policymaking or quasi-supervisory authority . . . adheres to full-time faculty status . . . is exercised by them only as a group [and] does not make them supervisors . . . or managerial employees who must be separately represented."[8] This response—apparently shared by all members of the Board—is based upon what we conceive to be the Congressional intent underlying the exclusion of supervisors from coverage under our Act.

When the Taft-Hartley amendments to the Wagner Act were enacted in 1947, supervisors were, for the first time, specifically denied "employee" status,[9] and employers were relieved of the duty to consider supervisors as employees under any law relating to collective bargaining.[10] These amendments were designed to curb two evils which had developed over the years: one, employer domination or control—through their supervisors—of employee organizing and bargaining activities; and two, frequent exertion of pressure by union officials upon unionized supervisors in their capacity as representatives of the employer.[11] In an attempt to deal with these abuses, while at the same time minimizing the number of supervisory individuals denied the protections of the Act, Congress narrowly defined the term "supervisor" so as to include only "individuals" who exercise supervisory authority "in the interest of the employer."[12]

In the opinion of the Board, faculty participation in the collegial decision-making process satisfies neither the letter nor the spirit of the supervisory exclusion as contemplated by Congress: it is exercised on a collective rather than individual basis, and, more importantly, it is exercised in their own interest rather than "in the interest of the employer." The employer's interest in collegial decision-making, it seems to me, is represented by officials of the

[7]Section 2(11) of the Act, 29 U.S.C. §152(11), defines the term "supervisor" as follows: (11) The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust the grievances, *or effectively to recommend such action*, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. [Emphasis supplied.]

[8]*C. W. Post Center of Long Island University, supra* note 6.

[9]National Labor Relations Act, §2(3), 29 U.S.C. §152(3).

[10]National Labor Relations Act, §14(a), 29 U.S.C. §164(a).

[11]H. Rep. No. 245, 80th Cong. 1st Sess. 18 (1947), in 1 Legislative History of the Labor Management Relations Act, 1947 at 304-308 (1948).

[12]National Labor Relations Act, §2(11), 29 U.S.C. §152 (11), *supra* note 7.

administration, not the faculty.[11] Finally, unionization of a university's full-time faculty is not likely to result in a resurgence of the evils sought to be eradicated by Congress in 1947—namely, employer interference with the union activities of its employees, and union interference with the job performance of employer representatives.

Before leaving the area of faculty status under the Act, mention should be made of the recent *New York University* decision in which the Board indicated that it was no more inclined to deny employee status to faculty members on the theory that they are independent contractors or agents, than on the theory that they are supervisors.[12] In determining whether a particular individual is an employee or an independent contractor, the Board is obliged to ascertain whether the recipient of the services has the right to control the manner and means of performance, as well as the result—the presence of such control indicating employee rather than independent contractor status.

In *NYU*, the University contended that the latitude afforded to each faculty member in such matters as independent study and research, university citizenship, and method of course presentation, made them independent agents. Moreover, it was argued that administrative deference to faculty committees in the daily operation of the schools and colleges rendered faculty members independent agents on a collective basis as well.

The Board rejected both contentions. We concluded that while the discretion exercised by faculty members in the performance of their individual and collective responsibilities may well make them "professionals," it did not make them independent agents. More importantly, the entrepreneurial risks and profits normally associated with independent contractor status were completely absent. The faculty members received an annual salary, were afforded substantial job security through the tenure system, and enjoyed many University-supplied fringe benefits such as sabbatical leave and retirement fund contributions.

Accordingly, it now seems reasonably well settled that the Board views the relationship of a university or college to its faculty as essentially an employer-employee relationship, and is not willing to remove the protective cover of the Act from faculty members, as a group, on the theory that they are supervisors, managerial employees, or independent contractors.

2. Special Faculty Committees

Having said this, however, I do not mean to suggest that there are no circumstances under which individual members of the faculty will be considered supervisors. Special faculty committees and department chairmen present problems. In *Adelphi University*, the Board was asked to determine the supervisory status of 14 faculty members who served on the Personnel and Grievance Committees.[13] The 11 members of the Personnel Committee were elected by their faculty colleagues for 3-year terms. Acting pursuant to the University's

[11] In my judgment, this is also the primary justification for not finding fulltime faculty members to be managerial employees.

[12] *New York University*, *supra* note 6, at slip op. pp. 6-7.

[13] *Adelphi University*, *supra* note 6, at 647-648.

personnel plan and the Committee's own by-laws, the Personnel Committee made recommendations to either the vice president for academic affairs or to the board of trustees regarding such matters as faculty appointments and promotions, awards of tenure, sabbatical leave, and faculty suspensions or dismissals. The Grievance Committee also consisted of faculty members elected by their colleagues. Its function was to hear and recommend to the board of trustees the adjustment of all faculty grievances, except those involving dismissal.

By a vote of 2 to 1, a Board panel concluded that the 14 faculty members serving on these two committees did not exercise supervisory authority; the dissenting vote was mine. In reaching their result, the majority relied upon the principle referred to earlier that authority exercised on a group basis is insufficient to make members of the group supervisors. They relied further on the fact that ultimate authority for the final decisions rested not with the committees, but rather with the board of trustees.

My dissent was predicated upon my belief that the Personnel and Grievance Committees were supervisory entities and therefore cloaked the individual members with supervisory status. It seems to me that there are significant differences between the collective exercise of quasi-supervisory authority by an entire faculty such as the 600-man faculty in *C. W. Post*, and the exercise of such authority by a relatively few faculty members elected to small committees as in *Adelphi*.

First, the authority exercised by the *Adelphi* committee members is more nearly analogous to the type of authority historically recognized as "supervisory" under our Act. It is highly concentrated, attaches only to individual committee members, and is limited in duration to the length of the individual's term in office. The authority collectively exercised by an entire faculty, on the other hand, is widely diffused, vests automatically upon the attainment of faculty status, and is of unlimited duration. Secondly, to the extent that special committees such as those in *Adelphi* are charged with responsibility for implementing a university's personnel policies, they are more clearly acting "in the interest of the employer" than are entire faculties striving to preserve their collective voice in the collegial decision-making process.

Nor am I persuaded by my colleagues' reliance on the fact that ultimate authority over matters brought before special faculty committees frequently rests with the board of trustees rather than with the committees themselves. The possession of ultimate authority over decisionmaking has never been a prerequisite to the finding of supervisory status under our Act; it has always been sufficient to find that the individual or individuals in question can make "effective recommendations" to those who do possess final authority. The record in *Adelphi* disclosed that during the 2 or 3-year period immediately preceding the hearing, the board of trustees had followed every one of the committees' recommendations—a fact which led me to conclude that their recommendations were, at the very least, "effective." I suspect that a similar situation exists at most colleges and universities, particularly in view of the fact that many educational institutions are chartered under state statutes which require that final authority be vested in a board of trustees.[16]

[16] *See, e.g.*, Cal. Corp. Code §9000-14122 (West Supp. 1973); Ill. Ann. Stat. ch. 32,

My position on the issue of supervisory status of faculty committee members, as noted earlier, is a minority position. Accordingly, it would appear that under current Board law individual faculty members may continue to perform "supervisory" or "quasi-supervisory" functions without foregoing their right to inclusion in faculty bargaining units, so long as their authority is exercised collectively through committees.

3. Deans and Department Chairmen

Having discussed the problems associated with the collective exercise of supervisory authority, let us now focus upon the problems associated with determining, in an academic setting, the presence or absence of such authority on an individual basis. We are here speaking primarily of deans, associate and assistant deans, directors, and department chairmen.

In most cases, high university positions such as president, vice president, and academic deans are stipulated to be supervisory and therefore outside the scope of the unit.[17] Lower level officials such as associate and assistant deans, directors of admissions, placement, and so forth, may also be stipulated out of the unit as supervisors, or they may be excluded on the basis of their failure to qualify as "professionals" or on the basis that they are primarily administrative personnel lacking a genuine community of interest with the faculty.[18] In a few cases, such individuals have been found to share a community of interest with the faculty and accordingly have been included in the unit, regardless of tile.[19]

The supervisory status of department chairmen has proven to be one of the most persistent problems facing the Board since its assertion of jurisdiction over colleges and universities. It has been raised in a high percentage of the cases brought before us and has yielded what appears—at least on the surface—to be somewhat inconsistent decisions. I might just point out in the Board's defense, however, that many of the apparent inconsistencies in our decisions are the result of specific evidence offered by the parties in various cases in support of their position as to inclusion or exclusion of the department chairmen in the unit.

In the final analysis, I suspect the crux of the problem here lies in the fact that the structure of most universities is such that the determination of supervisory status of department chairmen frequently hinges on factual findings largely derived from subjective rather than objective considerations. By this I mean that at few, if any, universities do department chairmen have the authority, on their own, to directly hire, suspend, promote, or discharge full-time faculty members in their departments. If they had such direct authority, it would be possible to

§§163 *et seq.* (1970), cited in Kahn, "The NLRB and Higher Education: The Failure of Policymaking Through Adjudication," 21 *UCLA L. Rev.* 63, at n. 224 (1973).

[17] *See, e.g., Fordham University, supra* note 6, at 140; *University of Detroit,* 193 NLRB 566, n. 1 (1971); *Manhattan College, supra* note 6, at n. 3.

[18] *See, e.g., Adelphi University, supra* note 6, at 644-655 (Director of the Instructional Media Center).

[19] *See, e.g., The Catholic University of America,* 201 NLRB No. 145, slip op. pp. 8-10 (1973); *University of San Francisco,* 207 NLRB No. 15, slip op. p. 5 (1973).

establish their supervisory status through a relatively objective analysis.

In virtually all cases, however, the university is structured so that actions of department chairmen relative to personnel matters take the form of recommendations to a dean, academic vice president, or other high official who makes the final decision. The recommendations of the chairmen may or may not be followed. Accordingly, the presence of supervisory status almost invariably turns upon the "effectively to recommend" language in the statutory definition of supervisor. Only if the recommendations of a particular chairman are deemed to be "effective" will he be considered a supervisor. Unfortunately, the determination of at precisely what point one's recommendations become "effective" is a very subjective determination; and if history is any guide, to the extent that subjective considerations are a factor in reaching a conclusion in each case, there are bound to be apparent inconsistencies—in the results if not in the analysis—of our decisions.

The supervisory status of department chairmen can perhaps best be discussed in terms of two basic models. In the first model, department chairmen are viewed as agents of the administration within the department, while in the second model they are viewed as agents of the department faculty in their relationship with the rest of the university.

The chairman in the first model assumes a role analogous to that of a "first-line supervisor" or "foreman" in an industrial setting. He is charged with the responsibility for implementing institutional policies within the department regarding such matters as budgets, faculty appointments, and teaching and research assignments. The Board's initial university cases indicate that this was the then-accepted model. In *C.W. Post*, for example, the Board found that department chairmen were supervisors because they made "effective recommendations as to the hiring and change of status of faculty members and other employees,"[20] while in *Adelphi University*, their supervisory status was predicated upon authority to effectively recommend the allocation of merit increases.[21] Likewise, in *Syracuse University*, a more recent case, department chairmen were found to be supervisors because they could "make effective recommendations as to the hiring and change of status of faculty members and . . . exercise substantial control over the day-to-day operations of their respective departments including assignments and monetary benefits and allowances."[22] Frequently, supervisory status may also hinge upon a chairman's supervision of teaching assistants, adjunct faculty, and department clericals.

While the first model coincides with my view as to the realities at some universities and colleges, it appears that a majority of my colleagues are much more likely to adopt the second model in which department chairmen are viewed as agents of the faculty in their departments, rather than as agents of the administration. Instead of assuming the position of "first-line supervisor" or "foreman," this model views a chairman's role as being analogous to that of a

[20] *C. W. Post Center of Long Island University, supra* note 6, at 906.

[21] *Adelphi University, supra* note 6, at 642.

[22] *Syracuse University*, 204 NLRB No. 85, slip op. p. 5 (1973); *See also Fairleigh Dickinson, supra* note 3, at slip op. p. 8.

"shop steward." Typically, the chairman is either elected by the faculty or appointed by the administration following faculty consultation, is limited to very routine management of departmental affairs, and serves as the department's representative in university functions. The most important feature of this model, however, is that all but the most routine departmental decisions and recommendations are based upon full faculty vote. Again, it is the presence of the so-called "shared" or "collegial" decision-making process which deprives department chairmen of their ability to make effective recommendations as individuals, and thus deprives them of their supervisory status.

In *Fordham University*, a panel majority, over my dissent, included department chairmen in the unit because, in their opinion, recommendations of the chairmen were made only after full consultation with the faculty, and such a structure of collegiality prevented the kind of "fully vested authority which we require for a finding of true supervisory status."[23] Similarly, in *University of Detroit*, again over my dissent, a panel majority found that while department chairmen made recommendations of their own apart from those of the faculty, such individual recommendations were only one of several considered by the administration in making a decision. Accordingly, the department chairmen were denied supervisory status because their individual recommendations could not be deemed "effective."[24] While the record in *Detroit* did not disclose whether the individual recommendations of the chairmen were accorded any greater weight by the administration than others which it received, in situations where such has been established, the Board has been inclined to view such deference as a function of experience and knowledge rather than an indication of supervisory status.[25]

In the recent case of *Rosary Hill College*,[26] a Board panel made clear their opinion that as a general rule department chairmen are not supervisors. The College in that case argued that the contrasts between an educational setting and the typical industrial setting, plus the dissimilarities between organizational structures at different colleges, justified Board establishment of specific criteria with which to measure the effect which varying roles of faculty members and students have upon the supervisory status of department heads. In declining to establish such criteria, the panel stated, "[We] are not persuaded . . . that faculty department heads *generally* have or exercise supervisory authority as it is defined in the Act."[27] The panel then elected to include the department chairmen in the unit, observing that their recommendations regarding personnel matters were made "on a collegial basis in consultation with fellow faculty members or through special committees."[28]

[23] *Fordham University*, *supra* note 6, at n. 13.

[24] *University of Detroit*, *supra* note 17, at 568.

[25] *See, e.g., Fordham University*, *supra* note 6, at 138; *Tusculum College*, 199 NLRB No. 6, slip op. pp. 5-6 (1972).

[26] *Rosary Hill College*, 202 NLRB No. 165 (1973).

[27] *Id.* at slip op. p. 3.

[28] *Id.* at slip op. p. 8.

As noted, I dissented in both *Fordham* and *Detroit* because I felt the record in each case supported a finding of supervisory status. In addition, I did not participate in *Rosary Hill College* and do not agree with the result. However, it appears that a majority of my colleagues consider department chairmen at most institutions to be employees rather than supervisors, and thus will require those who seek their exclusion to offer extensive evidence that the chairmen actually exercise supervisory responsibilities.

4. Part-Time Faculty Members

In addition to problems created by the supervisory exclusion, a second major area which has proven to be particularly troublesome in many university cases concerns the appropriateness of including part-time faculty members with their full-time colleagues in a single bargaining unit. It is also an area in which increased Board exposure to the rather unique problems associated with collective bargaining in educational institutions led a majority of the Board to review, reconsider, and then reverse its initial position.

The Board originally held that absent a stipulation to exclude, regular part-time faculty members were to be included in the same bargaining unit with the full-time faculty. We reasoned that since part-time faculty members possessed the same educational qualifications and were engaged in the same teaching function as the full-time faculty, a community of interest was thereby created which justified grouping all faculty members into a single bargaining unit.[9] In addition to being consistent with our practice in private industry, this test offered the further advantage of being relatively easy to measure and apply.

A majority of the Board, however—myself included—subsequently determined that the original test also ignored many of the more subtle issues regarding the extent to which part and full-time faculty members do not share a community of interest over such matters as compensation, working conditions, and university governance—subjects which would normally lie at the core of any system of collective bargaining.

Accordingly, by a vote of 3 to 2, the Board in *New York University* reversed precedent and for the first time excluded all adjunct professors and part-time faculty members not employed in "tenure track" positions.[10] In support of its position, the majority discussed a number of crucial areas in which a mutuality of interest between part and full-time faculty members was noticably absent. In terms of compensation, for example, since part-time faculty members received no fringe benefits and only a modest sum in the nature of an honorarium for their teaching efforts, it was obvious that the part-timers, unlike the full-time faculty, looked beyond the University for their primary source of income. In terms of University governance, part-time faculty members were ineligible to participate in either the University Senate or Faculty Council and were given no voice in determining departmental or institutional policies. In addition, part-time faculty members could not acquire tenure, taught only a few hours each

[9] *C. W. Post Center of Long Island University, supra* note 6, at 903-906; *University of New Haven*, 190 NLRB 478 (1971); *University of Detroit, supra* note 17, at 567-568.

[10] *New York University, supra* note 6, at slip op. p. 9.

week, and were not given responsibilities beyond teaching.

All these factors led the majority to conclude that the relationship which New York University maintained with its part-time faculty was essentially transient in nature, and therefore fundamentally different from the relationship which it enjoyed with the full-time faculty. Accordingly, it was determined that continued inclusion of part and full-time faculty members in the same unit did not really coincide with the realities surrounding the circumstances within which collective-bargaining should take place, and could therefore only serve to impede effective negotiations.[11]

I might add parenthetically at this point, that I do not view the Board's reversal on the part-time issue as being a sign of weakness either in the NLRB in particular, or in the administrative process in general. Indeed, I believe exactly the opposite to be true. As Mr. Justice White remarked recently with reference to the Board, "[o]ne of the signal attributes of the administrative process is flexibility in reconsidering and reforming of policy."[12] When increased exposure to some of the special problems associated with the determination of appropriate faculty bargaining units convinced a majority of the Board that not all of its industrial unit principles were transferable to academic institutions, Board policy was revised accordingly. To me, this is a clear sign of responsiveness and vitality in the administrative process—not an indication of weakness.

5. Support Personnel

As indicated earlier, Board policy requires that all members of the professional staff who perform supportive activities clearly associated with the educational process be included in faculty bargaining units. The range of job classifications falling within this category is broad.

In resolving unit placement disputes with respect to support personnel, the Board usually focuses on three issues: (1) are they professionals, (2) are their activities closely related to teaching, and (3) do they share a community of interest with the full-time faculty? While an affirmative answer to all three questions is required for unit inclusion, Board opinions tend to concentrate primarily upon the first issue—are they professionals?[13] In each case, the Board strives to avoid diluting traditional "faculty" interests by including ancillary nonteaching support personnel whose training, job functions, and

[11] Cases issued subsequent to *New York University* have continued to exclude parttime faculty members. *Fairleigh Dickinson, supra* note 3, at slip op. p. 8; *University of San Francisco, supra* note 19, at slip op. p. 4.

[12] *N.L.R.B. v. Savair Manufacturing Co.*, 94 S. Ct. 495, 505 (1973) (dissenting opinion).

[13] Section 2(12) of the Act, 29 U.S.C. §152(12), defines the term "professional" as follows: (12) The term "professional employee" means—(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and jugement in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic

interest are fundamentally different from those of the full-time faculty.

(a) Librarians

A number of cases in this area have focused upon the unit placement of librarians. The threshold question is whether or not they qualify as "professional employees" under the Act—is their job predominantly intellectual and varied in character; does it involve the consistent exercise of discretion and judgment; and, does it require advanced knowledge customarily attained through a "prolonged course of specialized intellectual instruction and study in an institution of higher learning. . . ."?

In *C.W. Post*, the librarians were held to be professionals because they all possessed masters degrees in library science and utilized advanced training in a specialized field in their work.[14] The Board further found that librarians had academic ranking, were entitled to all benefits accorded faculty members of equal rank, save tenure and sabbatical leave, participated in faculty meetings, and worked closely with both faculty and students in the use of library facilities. On this basis, the Board concluded that librarians were indeed engaged in a function closely related to teaching and enjoyed a substantial community of interest with the full-time faculty. Accordingly, librarians were included in the unit.[15] In cases subsequent to *C.W. Post*, librarians have been included in faculty units whenever their status as professionals has been established, and they are not deemed to be supervisors over library staff.[16]

(b) Teaching Assistants and Research Associates

Unit placement of teaching assistants is also frequently disputed because their teaching responsibilities provide them with a professional community of interest with the faculty. To date, the Board has excluded teaching assistants from faculty units on the theory that they are primarily students, and since their teaching functions supplement their academic program, they do not really share an overall community of interest with the faculty. In *Adelphi University*, for example, a Board panel concluded that teaching assistants should not be included in the faculty unit. The record established that they did not have faculty rank and did not participate in faculty meetings. Their employment was contingent upon continued student status, they were not eligible for tenure, and they did not share in university-sponsored fringe benefits, save insurance.[17] Many of the same considerations which prompted the Board to exclude part-

education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or (b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

[14] *C. W. Post Center of Long Island University*, *supra* note 6, at 906; *Accord, Tusculum College*, *supra* note 25, at slip op. pp. 13-14.

[15] *C. W. Post Center of Long Island University*, *supra* note 6, at 906.

[16] *Fordham University*, *supra* note 6, at 139; *Florida Southern University*, *supra* note 4, at 889; *Tusculum University*, *supra* note 25, at slip op. pp. 13-14; *The Catholic University of America*, *supra* note 19, at slip op. p. 8; *New York University*, *supra* note 6, at slip op. p. 13; *University of San Francisco*, *supra* note 19, at slip op. pp. 5-6.

[17] *Adelphi University*, *supra* note 6, at 640.

time faculty members from the unit in *New York University* are equally applicable to the unit exclusion of teaching assistants.

Most institutions draw a clear distinction between teaching assistants on the one hand, and individuals employed in classifications such as research associates on the other. The latter are frequently retained by a university for the purpose of engaging in full-time research, and thus are given no teaching responsibilities. Unlike teaching assistants, these individuals normally have faculty rank, are eligible for tenure, and share in the university's fringe benefit programs. Consequently, there exists a substantial basis for concluding that they enjoy a genuine community of interest with the faculty. Add to this the intellectual character of a research associate's duties, and it becomes apparent why the Board has found such individuals to be professional employees appropriately includable in the same unit with the full-time faculty.[18]

While librarians, teaching assistants, and research associates constitute only a few of the numerous supportive positions whose placement in a faculty bargaining unit has been disputed before the Board, those three classifications nevertheless typify the problems which have been raised in this area, and highlight the nature of the Board's response to date. My own suspicion is that future cases will continue to focus primarily upon the disputed individual's status as a professional employee, and in this analysis the intellectual character of his duties will be determinative.[19]

6. The Problem of Unit Fragmentation

The final problem I intend to discuss with you today is that of unit fragmentation—the awarding of separate bargaining units to separate groups of employees within a university. It is a problem which lurks behind each and every unit determination, and one which, if not carefully controlled, could result in such a proliferation of bargaining units that effective negotiations at any level would be difficult to attain.

In discussing unit scope earlier, I commented that the parties had stipulated in most cases that either a campus-wide or university-wide unit was appropriate. The principal exception thus far has been the requests by law school faculties for separate representation. The Board's approach in dealing with such requests—as in all cases where fragmentation is a consideration—has been to decide whether the differences between the two groups of employees in terms of their conditions of employment are so significant that inclusion in a single unit

[18] *C. W. Post Center of Long Island University, supra* note 6, at 906-907; *Florida Southern University, supra* note 4, at 890.

[19] *See, C. W. Post Center of Long Island University, supra* note 6, where guidance counsellors were included on the basis of the Board's finding that they "are required to have advanced knowledge and are performing the intellectual and varied functions contemplated in the definition of professional employees. . ." (189 NLRB 908), but admissions and academic counsellors were excluded because they "are not required to have knowledge of an advanced type and are not performing the intellectual and varied tasks, contemplated in Section 2(11) [sic] of the Act." (*Id.*); *See also, Manhattan College, supra* note 6, at 66, where nonteaching athletic coaches were included in the faculty unit as professionals because all had academic degrees and were engaged in "teaching physical and mental skills, utilizing educationally acquired knowledge of their specialty."

47

would preclude meaningful bargaining. In situations where such conflicts are predicted, fragmentation is deemed to be justified.

Application of this analysis to requests for separate law school units has resulted thus far in the granting of such requests.[40] In my opinion, many professional schools—including law schools—occupy a somewhat unique position at most educational institutions. For example, law schools are frequently required to operate in accordance with regulations pertaining to such matters as course load, course content, hours of instruction, and so forth, imposed not by the university but by the courts or the legal profession itself. As for law school faculties, the Board considers law professors to be members of two professions simultaneously—the teaching profession and the legal profession. Consistent with this dual membership, a law professor's intellectual interests in many respects may well be more closely aligned with those of practicing attorneys than with faculty colleagues. In addition, law schools more so than most other schools, are generally run as semi-independent enclaves in which student and faculty exchanges with the remainder of the university are the exception rather than the rule.

These considerations have prompted the Board to conclude that the interests of a university's law faculty and nonlaw faculty are sufficiently divergent so as to justify fragmentation in situations where separate law school units have been sought.[41] In addition, the Board has provided law professors with the widest possible latitude in preserving their various professional interests by conducting elections in which they have the option of choosing combined representation with the entire faculty, separate law school representation, or separate nonrepresentation.[42]

I personally agree with the Board's conclusion that unit fragmentation is justified in the case of law schools. I agree further with the observations made in *Fordham University*[43] and *Syracuse University*[44] that the principles regarding separate units and election procedures developed for law schools may well be equally applicable to other professional schools and disciplines requiring graduate work in preparation for a specialized area of endeavor.[45] I am convinced, however, that unit fragmentation in our colleges and universities must not be expanded beyond this relatively narrow category, for to do so would

[40] *Fordham University, supra* note 6, at 136-137; *The Catholic University of America, supra* note 19, at slip op. pp. 3-4; *Syracuse University, supra* note 22, at slip op. pp. 7-11; *New York University, supra* note 6, at slip op. pp. 7-8.

[41] It is clear, however, that a law faculty need not necessarily be represented separately and can be joined in a single unit with their nonlaw school faculty colleagues. *University of Detroit, supra* note 17.

[42] *Syracuse University, supra* note 22, at slip op. pp. 5-10; *New York University, supra* note 6, at slip op. pp. 7-8.

[43] *Fordham University, supra* note 6, at n. 11.

[44] *Syracuse University, supra* note 22, at slip op. p. 9.

[45] In *Fairleigh Dickinson University, supra* note 3, at slip op. p. 10, for example, the Board concluded that there was a sufficient factual basis upon which to establish a separate unit for the faculty of the dental school, but refused to do so in the absence of a labor organization seeking to represent them separately.

almost certainly result in excessive unit proliferation.

Unfortunately, a step in this very direction appears to have been taken, over my dissent, in *Claremont University Center*.[9] There, a Board panel directed an election in a unit limited to professional and clerical employees who were employed in the University's library system. The majority found that these individuals constituted a homogeneous group of employees who shared a close community of interest. In my opinion, isolating professional librarians from other professionals at the University, and segregating library clericals from other clericals who receive the same benefits and who perform like work under similar conditions, the panel majority unnecessarily fragmented the University's professional and clerical staffs along departmental lines.

While the *Claremont University Center* case did not involve a bargaining unit composed of faculty members, its rationale, it seems to me, is clearly transferable, and could be utilized as justification for the appropriateness of nearly any departmental bargaining unit, faculty or otherwise. Whether the Board will continue to approve less than university-wide bargaining units is still an unanswered question. The issue is certain to be raised with increasing frequency in the future, and to the extent that the principles enunciated in *Claremont University Center* are given an expansive application, the result, in my opinion, will be to engender divisiveness and instability in academic collective bargaining.

III. Conclusion

I have discussed today a few of the major problem areas encountered by the Board in its efforts to establish a body of law which can be applied in establishing appropriate bargaining units for our college and university faculties. While it is true that the determination of bargaining units constitutes only an initial step in the process of developing a meaningful collective-bargaining relationship, in many respects it is the most important step because it establishes the basic framework within which the bargaining relationship must mature. Realizing the importance of determining units which correspond to the realities within which bargaining is to occur, the Board has proceeded—and will continue to proceed—very cautiously.

On some issues, the current Board Members appear to be in relative agreement. The collective status of faculty members as employees rather than as supervisors, managerial employees, or independent contractors is one example; the usual appropriateness of separate units for law school faculties is perhaps another. On other issues, the Board is either split on the law—the exclusion of part-time employees, for example—or the result is dependent upon the particular facts in each case—the supervisory status of department chairmen. Finally, there are some issues—the prime example being the circumstances under which less than overall units will be approved—in which a general Board direction is not yet evident.

I suspect that in the final analysis there are as many ideas as to how the

[9] *Claremont University Center*, 198 NLRB No. 121 (1972).

details of this area should be charted as there are members on the Board. At this stage, I possess neither the perception nor the inclination to predict how the law in this area is likely to evolve. Of one thing I am certain, however, the bargaining units reflected in future NLRB faculty decisions will represent our very best efforts at striking a balance between the legitimate claims of faculty members for a more meaningful voice in determining their working conditions, and the necessity for preserving in our colleges and universities the ability to perform their educational functions.

Collegiality and Collective Bargaining: They Belong Together

by CAESAR NAPLES,
Assistant Vice Chancellor for Employee Relations, State University of New York

Programs such as these are not without their surprises, and I am about to spring the first one on you. When these tablets were assigned to us as the moderator pointed out, Larry Delucia and I were heavily involved in collective negotiations over the success or agreement to the first three year contract between State University of New York and its faculty union. After a lot of mutual worrying over the content of our talk we gradually came to the conclusion that we were on the wrong side of the issue. So we've agreed in advance of this presentation to switch topics. I am going to talk about how Collegiality and Collective Bargaining belonging together and Larry, I believe, is going to be talking on the other side of the issue.

I delved back into a Chemistry course that I took at one time in an effort to have the titles of our respective talks more closely scanned and my chemistry background reminds me that oil and water do mix with the addition of a little soap. I hope that what I am about to do will clean up a bit the confusion and, perhaps, make clearer the differences that may exist between us.

Those of you who were fortunate enough to attend last years' First Annual Conference heard what, in my opinion, was an excellent exposition of this topic given by Donald Wollett, Professor of Law at the University of California at Davis. It is reprinted in the *Proceedings* of the First Annual Conference and I would commend that article to each and everyone of you because I think it is a very thoughtful and deliberate presentation. In true academic tradition, without any advance warning, I am going to take off on some of the things that he says in that article in attempt to give you a different perspective. I won't restrict my remarks to Wollett's presentation, but I think that such an effective presentation deserves at least a hearing on the other side. His topic was entitled "Historical Development of Faculty Collective Bargaining and Current Extent", but with a characteristic penchant for going directly to the heart of the issue he devoted the bulk of his time and all of his argument to what, in my opinion, was a more appropriate and central issue. That is, Self-Governance and Collective Bargaining. Can they co-exist? His conclusion is unequivocally that they cannot. I disagree with that thesis. I propose that those elements which are essential to the success of our institutions of higher education and which distinguish our institutions of higher education from elementary and secondary schools, a virtually self-policing, self-evaluating, self-tenuring, and self-motivating professoriate with the freedom to pursue knowledge for its own sake and for the sake of imparting it to future generations, are more threatened by collective bargaining's seductive siren call of self-determination, dignity, and power than any challenge from outside those marblized structures.

Professional Dialogue Lost

Let me clarify my thesis for a moment before I attempt to present its proofs. It my own observation K-12 teachers, in the last ten years, forswore some of their most significant benefits when they adopted collective bargaining as the exclusive method for dealing with administrators, school boards, and the public. Professional dialogue such as it had existed is not very much dependent upon contractually created labor-management committees with carefully delineated agendas whose membership deliberately coincides with the internal political pressure groups within union membership. Further, and every bit is important, I think the output of those committees is carefully relegated to recommendations to the union and to management. Any political milage to be garnered from their implementation is enjoyed by the organization and by the institution across the bargaining table. That old collective bargaining maxim, you don't give away what you can sell, demonstrates its applicability here. Further, and I hope of greater enathema to the teacher-scholar, neither the union nor management can allow such committees to develop recommendations however meritorious which will box in the principal at the bargaining table. Each party may desire or even require important trade-offs before it concedes a point. In other words, the parties can't allow committees such as these to develop a head of steam that will box them in at the bargaining table.

One more example that I hope will serve to illustrate the point. In my own school district there are about 165 elementary and secondary teachers. As a parent, and in fairly regular contact with other parents, I've heard many complaints about wasted resources, unnecessary and irrelevant porgrams, and the impression that our school district is in need of a more efficient or perhaps a better disciplined management. At the same time I became aware of a petition that was circulated to the school board bearing the signatures of the 165 teachers, both tenured and untenured. The petition called for the removal of the incumbent superintendent. I believe that ten years ago such unanimity of professional opinion would probably have resulted in an immediate dismissal or, at the very least, a hasty resignation or retirement of the administrator involved. My school board tempered, no doubt, by the heat and numbed by the rhetoric of adversarial collective bargaining with the teachers' union blithely dismissed the petition as another union tactic boardering, perhaps, on an unfair labor practice since it was an attempt by the union to influence management in the choice of its spokesman at the bargaining table. I wouldn't be surprised, as a matter of fact, if the school board regarded that petition as testimony as to the effectiveness, from a managerial point of view of the management spokesman in turning back what were the unrealistic, perhaps, or at least extreme, union demands. While those teachers have gained through collective bargaining or collective clout the legal status to (and don't forget I am a management representative) insult, cajole, picket, boycott, and articulate exaggerated criticisms about what undoubtedly may be, in some cases, valid complaints, they have paid, I believe, too dear a price. This is precisely my thesis.

Unless our educators regard collective bargaining to be what it is in our institutions of higher education, at best, an arena where some, but by no means all, issues are debated, argued, compromised, traded-off, and in some fashion,

hopefully resolved, they will have lost proper involvement in precisely those issues which separate them from their brothers and sisters in elementary and secondary classrooms or who labor on dreary assembly lines.

Who is Management, Labor?

Traditional collective bargaining systems presume two sides, labor and management. I think we need a scorecard to decide who is labor and who is management. Let's take a look at that for a moment. If we assume, as I think we have to in collective bargaining situations, that the faculty are employees, who, then are the employers? In state systems or in public systems is it the state because the state furnished the dollars and the buildings? I don't think that's anymore an indication of who management properly is then if you say that the state legislature is the employer of our judges because they furnish the salary dollars or the building in which the judges work. Is it the administration? Let's just take a look at the position of longevity of our administrators, and let me say, by the way, that I am drawing from my own observation, as I am a very careful reader of the help wanted ads in the *Chronicle of Higher Education*, it seems to me the average positional life span of our administrators in higher education is only slightly longer than that of an artillery forward observer in combat time. Except for collective bargaining, and I hope to show this later when campus presidents and the coteric of policy-makers with whom the campus president may surround himself fail to satisfy the faculty and students, they don't seem to last very long. As a matter of fact, in the State University of New York system, (and in other systems as well, Kingman Brewster's statement at Yale as few years back, in terms of the revaluation periocically of the president comes to mind) local campus presidents are viewed as having five-year terms. They are subject to review. The State University of New York, for example, now formally evaluates its presidents by means of evaluation committees which include faculty, staff, and students. To my thinking this merely formalizes the de facto system which had traditionally existed. Once the president or other administrator ceases to command the respect and support of the faculty I think his days are numbered. Contrast this with the life-time job security of a tenured faculty member who will probably be there 20 or 30 years.

Returning to Wollett's article for a moment, we use the traditional indicators of management, recruitement, distribution of merit increases, effective recommendations with respect to the award or denial of tenure, promotions, workloads, which courses shall be taught when, and by whom. These are matters decided effectively by the faculty in many cases not by the administration. I am not talking about who has the final say, I am talking about who has the real say. In traditional labor-management parlance, this makes the faculty-qua-faculty, management. In the private sector those are the kinds of decisions which for the most part are exclusively managerial. Certainly, this means that many if not all senior faculty could be considered management. If we take a look at the tenure bulge that we are facing now, that large bulk of tenured faculty who received tenure during the haycyon days of higher education and are going to be with us like the snake that swallowed the rabbit for a good long period of time, then the number of faculty who properly could be considered managerial is going to

53

increase. My question is, in 15 or 20 years, who's going to be left to sit on the other side of the bargaining table? What about the institutional direction in mission, is it, in fact, the president or his cabinet who decides what the standards for graduation are going to be? Do they decide that foreign language, for example, shall no longer be required for a Bachelor of Arts Degree? Do they establish standards for grading? In many ways the list is endless but the answer in each case I think is virtually the same. The faculty-qua-faculty makes the effective determinations. Now, Don Wollett faces this issue and concludes, and I am going to quote at some length:

> If any faculty member has substantial responsibility on behalf of management to regularly participate in the performance of all or most of the following functions, employ, promote, transfer, suspend, discharge, or ajudicate grievances, recruitment, award merit increases, award or deny tenure, advance faculty at the tenure ladder, promotions, if the exercise of such responsibility is not merely of a routine nature but requires the exercise of independent judgment, then he is part of management. Thus, many members of the establishment faculty may find themselves on the management side of the bargaining table if the self-governance structure survives collective bargaining.

The capsule from Don Wollett concludes that collective bargaining amounts to a turning away from collegiality and self-governance and a moving toward an adverserial system which recognizes as a central fact of life in the academy that there are those who manage and those who are managed. There are employers and employees. The central question I would ask is who will be left on the labor side of the table? The junior, untenured faculty borrowing an elitist phrase from my faculty colleague? The unproven faculty? By this exposition that is precisely who will be left.

On the management side, again using this criteria, smuggly will sit the Board of Trustees, any applicable elected governor, legislature, county executive, or county legislature; along with vice-presidents, deans, directors, division chairmen, and department chairmen, senior tenured faculty and all those who sit on personnel, tenure, promotion, evaluation and curriculum committees. Where is the future in the sense of that kind of system? Where is the parity of power upon which collective bargaining rests? One more point, much but all of this reductio ad absurdum rests upon the premise that principles learned from our industrial sector and 4 or 5 years in the public sector have taught us that we must divide all this gall into two parts, labor and management. They are intrinsically, inherently, and unalterably opposed. What rule, law, or immutable principle says that this must be the order of things? One would hope that we could learn from the mistakes of the past and hopefully not repeat them. In my opinion, the single most important difference between all other collective bargaining experience and higher education is precisely what makes the industrial sector terminology anachronistic.

There is no clear delineation between management and labor. Issues, which at General Motors are unequivocally managerial prerogatives function most effectively in the university context of shared authority. Before this is all dismissed as pie in the sky, let's take a look at faculty governance. Admittedly

there are as many models as there are practitioners. The same, of course, can be said for virtually all fields of human activity. It is also apparent that models exist which do not approximate perfection but for purposes of this discussion, let me describe a few areas covered by many governance structures and ask you to apply them against the dichotomy of management and labor. Evaluation, admissions policies, curriculum, grading standard, promotion, development of departmental and campus budget, selection of department chairman, deans, recruitment. I maintain that faculty involvement in such decisions is essential to the health of an academic institution and to the professional life of the professoriat. The weight given to faculty recommendations further is dependent of the careful deliberation and the merits and validity of those recommendations. When I hear the argument made that decisions such as these, and again I quote from Wollett's article, "are managerial in the sense that they direct and control and sometimes terminate the on-the-job life of other persons," the question of who makes them is simply irrelevant in a collective bargaining structure.

Majoritarianism

Collective bargaining is a system of representative government predicated upon the principle of majoritarianism according to Wollett and candidly that makes me stutter. I believe colleges and universities are devoted to an opposite principle, the right of the individual faculty member against the majority especially his right to assert his differences. Placing the effective decision-making authority in the hands of faculty colleagues is no guarantee, of course, that the decision in any particular case will be better than one reached by a dean or an academic vice-president. But, I maintain that the faculty establishment is accountable to itself and properly so, while administrators must answer not only to a grieved faculty member, but to students, alumni and to tax-payers. When we are talking about many of the kinds of issues I have outlined, I would put my money on faculty who are responsible to themselves as professionals. As a member of a profession myself, I would want my fellow professionals to decide these important questions. If there is an academic profession at all, it must resist playing the numbers game, majoritarianism must be rejected. These decisions are far too important to be decided by majority vote. The other major danger is that the faculty may well lost it's right to become involved in these decisions at all. Collective bargaining presumes two parties, labor and management each with the authority to act and commit its constituancy. Unless we all desire to play a game of frustration where the management spokesman reaches a tentative agreement only to be over-ruled by a dean, vice-president, president, or governing board while as a parallel exercise a union spokesman seeks ratification first from the tenured faculty, then from the non-tenured, then from the female and minority members, then from the physical education faculty, et al., the decision process must be compressed in time and space at the bargaining table. Some issues, I am afraid, when resolved at the bargaining table will emerge as the least common denominator, that is, a decision that would be least offensive to all the participants.

Management Prerogatives

What happens when a state or federal labor board decides that management need not bargain over some of those issues? There are managerial prerogatives and under collective bargaining ground rules, these may be excerised unilaterally by management. I am arguing that collective bargaining is necessarily bad, I hope what is coming through is the point that collective bargaining is one method of decision-making, and problem resolution that ought to co-exist with others on our campuses. First, I think it is important in the early days of collective bargaining where unions don't always enjoy total majority support or majority membership on our campuses, that there be a no man's land where articles and issues can be discussed and debated without the threat of winning or losing that collective bargaining seems to imply. Further, there are some issues peculiarly unsuited for resolution in the collective bargaining arena. Such issues for example, that require lengthy debate and persuasion and careful base touching. I am talking now from my own experience in a multi-campus situation. Some issues have to be sold at each and every campus before they can be implemented completely and in good faith. To attempt to do this in the compression chamber of collective bargaining is foolishness. It raises expectations on the part of a lot of people which are never going to be borne out. Finally, some issues really do not divide themselves along classic labor-management lines. You can come up with as many examples of those kinds of issues as I can, but I point out that if we claim that participants in the resolution of those kinds of issues labor on the one side, management on the other, and never the twain shall meet is no way to resolve those issues. Finally, it would seem to me that collective bargaining with its frozen terms and conditions for the length of the contract, with each provision of the contract dependent as part of a system of trade-offs upon every other issue lacks the desirable and necessary flexibility to make modifications in midstream.

Conclusion

Finally, I think that collective bargaining rather than government will last only so long as the parties, union, management, and the faculty desire governance. Once the union sees governance as a device used by management to avoid coming to grips with difficult problems or as a rival in the same sphere of activity as the union only making fewer philosophical and financial demands on its constituancies, then union will be justified in launching an all-out attack. On the other hand, if management perceives governance as a faculty or union device to achieve two bites at the apple, management will divert the important issues away from the governance structure to the bargaining table where, in the system of trade-offs, it may stand a better chance of getting what it needs. I don't believe that collective bargaining is necessarily wrong or bad for higher education, indeed it may be one way to protect important institutional values and practices from temporary but strong outside pressure. It also may be the most effective way of addressing issues such as salary and fringe benefits along with some others. The important point is that we do not leap prematuraly into the collective bargaining arena without first understanding the risks involved.

We must make sure that we are willing to give up the valuable elements inherent in traditional governance. As members of a learned profession we all have a responsibility for the consequences of our actions. We hear a lot of rhetoric about developing new approaches to problem-solving. We can observe the developments in the private sector, and more recently, in elementary and secondary education. If we chose to follow that well-trodden path, we are likely to reach the same end. I, for one, hope that like Robert Frost we will take the road less traveled by and maybe that will make all the difference.

57

Collegiality and Collective Bargaining: Oil and Water

by LAWRENCE DELUCIA
President, United University Professions

Introductory Remarks

I shall confine my remarks in this paper to the State University of New York and more specifically to its *Professional Services Negotiating Unit*. There are currently approximately 14,200 academics and professionals (11,000 academics, 3,200 professionals) in the unit. As an organization of professionals, we are pledged to the removal of the artificial distinction between academics and professionals by demanding due process for all persons in the Professional Services Negotiations Unit. We are geographically dispersed and we have *United University Professions* (UUP) Chapters at twenty-seven campuses. Included in the unit are four university centers; four health science centers; thirteen four-year arts and sciences colleges; six two-year technical colleges; three specialized colleges and a budding college of Optometry.

Our unit contains various and varied constituencies, who perceive collegiality and collective bargaining differently. It is important to point this out at the outset. Because of these perceived differences, I want to offer the current definition of collegiality and then my own definition.

Let me turn to the present definition of collegiality. It is an intra-university system by which faculty, and in some instances, professionals, may, in some measure, influence managerial (administrative) decisions on re-appointment, promotion, tenure, and a host of other questions. Such concepts and vehicles as governance, consultation, peer judgment and shared authority are consistent with the term collegiality. "In house" decisions with respect to personnel matters are made by a chief administrative officer on an individual, subsequent to consultation and a judgment rendered by the individual's peers and lower level managers. Such decisions are final and are not reviewable or at least are not reversible by anyone outside the university system. This I call a closed decision system.

My own definition of collegiality is significantly different. An individual whether academic or professional is subject to an evaluation by peers at the departmental level. The department's chairman is considered a peer. If peer evaluation if favorable, the presumption is that the individual is re-appointed, tenured, promoted, etc. If peer evaluation is unfavorable, the opposite is presumed.

The chief administrative officer (campus president) has a choice of accepting or rejecting the results of peer evaluation. If he accepts the person is re-appointed, tenured, promoted, etc. If he rejects peer evaluation, it becomes incumbent upon him to give reasons for his decision. His decision, upsetting peer evaluation, may become the basis for a "just cause" arbitration. I shall refer to just cause later in the paper.

My thesis is that collegiality and collective bargaining are not an oil and water situation. The present collegial system, specifically in regards to reappointment

and tenure, and in the absence of collective bargaining, may have worked reasonably well in the past especially in the era of expanding budgets. I must qualify this statement to the extent that the university and health science centers have had a longer history, more sophistication, and probably more success (with the collegial system) than the four, two-year and specialized colleges.

The present collegial system of decision-making—and again, I want to zero in on re-appointment and tenure—must be substantially modified now that collective bargaining is here and now that we are in a no-growth period for state university. Job security for professionals and academics is this union's number one priority. We can no longer countenance decisions, which affect a person's livelihood and career, being made without accountability for these vital decisions. Accountability for these decisions means that an additional dimension must be added to the collegial system. This additional dimension is accountability through just cause binding arbitration. We strongly favor binding arbitration whenever a chief administrative officer negates peer evaluation and a judgment is made by the union that the decision is unreasonable, arbitrary or capricious. The very fact that a decision can be reversed through arbitration will force the decision-maker to use discernible, defensible and equitable criteria. We will be able consequently to move from a closed system to an open system, if needed, to everyone's relief and benefit.

I want to dispose at once of the argument that arbitrators do not have the expertise to make judgments on academic and professional retention. If peers have made a reasoned judgment that an individual should be retained and if the chief administrative officer demurrs, then he must try to convince an arbitrator that his decision was fair. The resistance to the concept of binding arbitration is primarily a rationalization by those who do not want their decisions and plenary power questioned or reversed.

Framework Of Analysis

Essentially, I have taken a "half-way house" position. That is, I want to retain the core elements of collegiality (consultation, peer judgment, governance, shared authority) in decision-making. However, and it is a very important modification, collective bargaining introduces a new institution, the union, into the collegial process.

Our union is mandated by law to bilaterally establish terms and conditions of employment for those we represent. We cannot allow decisions affecting a person's livelihood and career in the profession to rest solely on a system in which the chief administrator officers (campus presidents) and the chancellor have decisive and complete power without accountability. There must be accountability for decision-making, and in our view, there is none under the present collegial system. We call for an expanded system, which operates on the basic premise that those who decide important matters must justify what they have done when peer judgment is reversed. If they cannot, the decision is reversed.

It may seem that I have placed those employees in the bargaining unit, who have participated, for example, in the re-appointment procedure of a colleague in an untenable position. After all, the argument runs, they are wearing two

very different kinds of hats. On the one hand, the peer evaluator is involved in the decision process through the recommendations made. On the other hand, he himself may be affected by these recommendations. There is some substance to the argument but not nearly enough to either dismantle a process built painstakingly over a long period of time; or to ignore the intrusion of a new, dynamic and wholly legal institution into the collegial system.

I believe collegiality may very well be strengthened, not weakened, by collective bargaining. Administrators (managers) are placed on notice that judgments which seek to reverse collegial decisions must be based on given standards plus evidence that these standards were applied. The burden will be on them to demonstrate, if a decision reaches arbitration, that they acted reasonably and consistently in reaching the judgment they did. Currently there are far too many instances in which academics and professionals lose their livelihood contrary to collegial determination, and no one knows why. Some decisions are made *in camera*. No reasons may be given. No effective due process is available to the person who has lost his job.

This aspect of the collegial system must end and I believe it will. If just cause binding arbitration is made part of the collegial process, as I believe it should, administrators will become better and more rational decision makers. This will benefit both the University and the profession, and will open up the collegial system to much needed reform.

Summary and Conclusions

In my judgment collegial oil and collective bargaining water can co-exist. The traditional procedures should remain, but they need to be changed, modified, and strengthened with the advent of collective bargaining. With the changes I have envisioned, true collegiality can finally take place. An individual will be evaluated by his departmental peers, those who can best judge his performance and potential. Their recommendation carries significant weight with the campus president carrying the burden of proof if he chooses to go against the recommendation. Thus through collective bargaining, we are in a position to foster true collegiality.

I deliberately did not want to explore all substantive matters that will change. Instead, I limited myself in this paper to changes that must occur in the area of job security. Particularly in these days of shrinking budgets and budget lines, professional and academic employees must be placed on a par with and brought into the mainstream of rights enjoyed by millions of other Americans.

The CUNY Grievance and Arbitration Experience: What Does It Teach About Collective Bargaining?

by MAURICE C. BENEWITZ & THOMAS M. MANNIX
Director and Assistant Director, NCSCBHE, Baruch College

Under a grant from the Carnegie Corporation, the National Center has undertaken a study of first step and class grievances in the first three years of collective bargaining at the City University of New York. During this period there were two units, two agents and two contracts. Some 659 grievances were identified. This is a large body of data and it is probable that it reflects concerns which will arise elsewhere. This preliminary report is meant to describe what happened in rather broad strokes. Future publication will be more detailed and analytical.

The City University of New York, as a city agency, had been bound by collective bargaining contracts between unions of non-academic employees and the City of New York. These groups included clerical employees, building service employees, and other supportive personnel whose bargaining contracts were not primarily academic in nature and scope. On September 1, 1967, the Public Employees Fair Employment Act (Taylor Law) became effective. Although not directed specifically toward higher education employees, but rather covering all public employees in New York State, the law did accentuate efforts to organize the professional staff in the CUNY system.

Preparation for Bargaining

By 1968, shortly after the enactment of the Taylor Law, CUNY consisted of nine senior colleges, six two-year community colleges, and a graduate center with a student body of nearly 150,000. Today, there are twenty units, twelve senior colleges including the graduate center, and eight two-year colleges.

With the new law less than three months old in November 1967, the first employee petition was filed by the Legislative Conference (LC) with the Public Employment Relations Board (PERB), the administrative agency responsible for implementing the Taylor Law. Shortly thereafter an intervenor's petition with PERB by the (UFCT) United Federation of College Teachers was filed.

Unit Decision

PERB began unit determination hearings in February 1968 and on May 1, 1968 two units were designated. The unit determination made by PERB's Director of Representation Paul Klein was appealed and finally on August 9, 1968 the three-man PERB panel issued a majority decision (2 to 1) upholding the Klein decision. PERB Chairman Robert Helsby and member Joseph Crowley (faculty member at a New York City private university) formed the majority with member George Fowler dissenting.

Unit 1 consisted of: business manager; business manager, assistant; business manager, assistant to chairman of department; clinical assis-

tant; college dentist; college engineering technician—A, B, & C; college physician; college science assistant—A, B & C; college science technician—A, B, & C; critic teacher; educational and vocational counselor; fellow; fiscal office; fiscal officer, assistant; fiscal officer, assistant to higher education associate; higher education officer; higher education officer, assistant to instructor; lecturer (nursing science); personnel counselor; professor; professor, assistant; professor, associate; registrar; registrar, assistant; registrar, associate; registrar's assistant; research assistant; research associate; teacher; teacher of library; tutor.

Excluded: All other employees, including: adjunct professor; chancellor; chancellor, vice; dean; dean, assistant; dean, associate; director; director, assistant; director, associate; lecturer; librarian, chief; president; principal, high school and elementary; provost; teaching assistant; visiting professor.

Thus all full-time employees *except* Lecturer (Full-Time) were covered by Unit 1.

Unit II consisted of Lecturers, part time Adjuncts of all grades, and Teaching Assistants and excluded all other employees.

Election Results

The UFCT won the bargaining rights in Unit II (1634 UFCT; 731 LC; 350 No Agent) on December 4 and 5, 1968, but the Unit I results were unclear since neither organization obtained a majority of the valid ballots cast (2095) LC; 1680 UFCT; 656 No Agent). Finally, on December 17 and 18, 1968, the LC defeated the UFCT (2067 to 1774) in the run-off election.

Negotiations began in February 1969 and the LC agreement was dated September 15, 1969. The UFCT agreement was dated October 3, 1969. Both contracts were to run through August 31, 1972. Details of the subsequent merger of the LC and UFCT into the Professional Staff Congress (PSC), the PERB hearings which established a single employee unit for CUNY professional staff personnel, and the content of the successor agreement now in effect will have to wait for the final report of the research study later this year.

Both of the CUNY contracts contained a grievance procedure that culminated in binding arbitration with the arbitrators chosen from a three-man revolving panel. Before detailing the CUNY grievance procedures, some general observations about grievance procedures as found in college contracts should be kept in mind.

Grievance Survey

Dr. Benewitz studied the grievance procedures in four-year contracts last year in some detail. In reviewing twenty-four contracts covering fifty-four institutions including some two-year colleges as in the master CUNY and State University of New York (SUNY) contracts, he found that twenty-one (88%) had some form of grievance procedure and eighteen (75%) had either binding or advisory arbitration as the final step. Mannix reviewed ninety-four two-year college contracts

covering one hundred and thirteen colleges and found eighty-six (92%) contained grievance procedures and seventy-six (81%) called for binding or advisory arbitration as the final step. Benewitz discovered that it was a common practice in the four-year clauses to exclude academic judgment from the review of an arbitrator. Mannix found that of the sixty-eight two-year agreements with binding arbitration thirty-eight (56%) limited review of questions concerning academic judgment, appointment, reappointment, promotion, tenure and personnel policies to a procedural review.

At least five grievance procedure sub-sections were found in nearly all contracts whether for two or four-year institutions: 1) some form of informal settlement procedures; 2) a definition of what is a grievance and what is an arbitrable grievance (although the actual definitions varied from contract to contract); 3) an initial time limit for filing grievances; 4) internal time limits at the various stages; and 5) a requirement calling for written responses.

CUNY Clause Specifics

Article VI, the grievance and arbitration clause in both the LC and UFCT contracts, sets up an informal procedure:

> A complaint is an informal claim by an employee in the bargaining unit, or by the (LC or UFCT) of improper, unfair, arbitrary or discriminatory treatment.
>
> A complaint may, but need not, constitute a grievance. Complaints shall be processed through the informal grievance procedure as herein set forth.

The definition of a grievance in both contracts is narrower than the definition of a complaint.

A grievance is an allegation by an employee of the (LC or UFCT) that there has been:

(1) a breach, misinterpretation or improper application of the terms of this Agreement; or

(2) an arbitrary or discriminatory application of, or failure to act pursuant to, the Bylaws and written policies of the Board related to the terms and conditions of employment.

In addition, the CUNY contracts had a specific limitation of what was arbitrable under both agreements.

> Nota Bene: Grievances relating to appointment, reappointment, tenure or promotion which are concerned with matters of academic judgment may not be processed by the (LC or UFCT) beyond Step 2 of the grievance procedure. Grievances within the scope of these areas in which there is an allegation of arbitrary or discriminatory use of procedure may be processed by the (LC or UFCT through Step 3 of the grievance procedure. In such case the power of the arbitrator shall be limited to remanding the matter for compliance with established procedures. It shall be the arbitrator's first responsibility to rule as to whether or not the grievance related to procedure rather than academic judgment. In no event, however, shall the arbitrator substitute his judgment for the academic judgment. In the event that the grievant finally prevails, he shall be made whole.

63

The CUNY contracts set a time limit for the initial filing of a grievance, set time limits for answers and appeals at the various steps, and required written responses from management. Basically, the grievance procedure is:

Step 1 the College President or his designee;
Step 2 the Chancellor or his designee;
Step 3 arbitration.

Each contract contained articles concerning the rights of the agent and unit stability. Generalized language on teaching load and facilities, appeared in each. Each contained salary schedules which were complex for a number of reasons: many categories (much greater in the case of the LC) existed in each unit and in addition, these were three year agreements, with a separate salary schedule for each year. Finally, each agreement included articles specifying evaluation and observation procedures and establishing employee files some of which were open to the employee and some of which were not.

These articles required great attention to detail in appointment dates, issuance of memoranda containing specified information and the like. The initial observance of most of these provisions was required of Chairmen, personnel and budget committees and other groups of unit members, most of whom had no experience with labor agreements. There was little training of such persons in the first years of the CUNY Agreements.

Additionally, the contracts incorporated by reference the Board Bylaws. This gave contractual sanction to still further rules concerning appointment, tenure, promotion, departmental government and the like.

Soon after the CUNY contracts became effective grievances were filed on the various campuses. Until September 1971 there was no requirement that these be centrally filed and no general study of the grievance experience had been done. This study is attempting to locate and review all of the grievances filed under both contracts through these expiration dates (August 31, 1972). Specific details of the methodology used in the study will be explained in the final report. Suffice it to say for now that three law students from Columbia gathered the basic data by visiting college labor relations designees and union officials gaining access, in most instances, to the local campus grievance files. Only one institution denied us access to files but at several campuses files did not exist for the first year or the first semester of work or were incomplete.

Initial Results

An attempt has been made to compile the number of grievances that were brought at Step 1 by each agent at each campus in each of the first three years of the CUNY contracts (Chart 1); the size of the CUNY staff by campus type in each unit in each year of the contracts (Chart 2); a summary table which shows the grievance rate in each year for two-year and four-year campuses (Chart 3); and a chart (Chart 4) that shows the grievance rate at each of the twenty locations for the three year period.

These charts show a total of 629 step one grievances filed in the first three years. They also showed thirty additional class grievances not filed at Step 1 of any College. University and union officials feel the number was closer to 850 but

we could locate files and data for only 659. Four-year colleges had 421 step one hearings and two-year campuses had 202 cases with six joint grievances spread across the two campus types in the three years. The number of step one grievances filed in the first year, 175, jumped to 247 in the second year and fell slightly to 237 in the third year. The grievance rate at the two-year colleges averaged .014 but ranged from .011 in the first year to .018 in the second year. The four-year rate also averaged .014 with a range from .013 in the third year to .016 in the first year.

Chart 4 shows an interesting pattern of grievance rates between the two-year and the four-year campuses. Half of the two-year rates are relatively high (.036, .032, .030, .027) and half are relatively low (.012, .009, .008, .004). The four-year rates range from .027 to .000 with a more uniform distribution in the middle range.

Chart 5 lists the contract articles that were cited by the grievant or the bargaining agent as being relevant at the Step 1 hearings (including class actions not filed at Step 1). 1,016 separate citations were made in the first 629 individual grievances. No attempt has been made to determine how accurate the articles cited by the grievant or the agent were. Experience indicates, however, that it is the issue grieved and not the contract article which is of importance. The issues were narrower than the contract citations. Often, three or more articles were cited in the same complaint.

Chart 6 lists, by agent, the number of issues raised in the first 629 individual grievances at the colleges that dealt with employment or re-employment. Nearly 80% of the grievances raised an employment or re-employment issue in the college as opposed to class action grievances which deal with other types of items as we shall note.

One of the interesting features of the first two CUNY contracts is the Nota Bene referred to earlier in this report. Although nearly 80% of the grievances raised employment issues, the grievants and the unions did not often cite the Nota Bene as being involved in the cases. The grievance article was cited 20 times in the first year, 64 times in the second year, and 29 times in the third year. Information is currently being developed to compare these citation by the employees or their representatives with management's step one responses. It would be expected that the Nota Bene would be used by the university more often than by the unions since it limits what issues can be decided by an arbitrator.

Chart 9 shows the number of college-filed grievances where the step one and two answers upheld the allegations of the grievants. Notice that the step one answers which upheld the grievants had a narrow range while the step two situation fluctuated widely (4-19%). But in any case, only a small percentage of all grievances were upheld, there were further reversals of the university at the arbitration step.

Chart 10 lists information concerning the timeleness of grievances filed. Although the language in the CUNY contracts is vague (grievances must be filed within a reasonable time) only fifteen grievances were denied by Colleges at step one as being untimely. None were denied in the first year. Of the five denied in the second year, four were appealed to step two where they were denied again. In 1971-1972, six grievances denied as untimely at step one were not appealed.

Two were appealed but withdrawn before a step two hearing was conducted and two others were appealed and denied at step two. One can conclude that the overwhelming majority of grievances filed at step one were, in fact, filed within a reasonable time or management at the various campuses decided to hear grievances on their merits and seldom raised the procedural question of timeliness.

The final analysis of this information will include the identification and discussion of areas of general concern to all (most) campuses. In addition, areas that were special to particular colleges, special to four-year or two-year colleges, and special to particular departments within a college or among colleges will be detailed.

Initial Conclusions

It is possible, at this point, however, to show support for the hypothesis that a significant proportion of all grievances would concern reappointment and the failure to grant tenure or a Certificate of Continuous Employment (the guaranteed status afforded lecturers, full-time in the UFCT agreement).

Despite contractual language concerning facilities and support staff, the number of grievances concerning such topics was virtually non-existent.

Another hypothesis that grievances brought by individuals would not differ concerning topics from those with organizational support but would fail to be sustained more often than grievances supported by organizations is partially supported. Seventeen cases arose under the LC contract that were handled by individuals. None of these were upheld at step one. One of the cases was settled with a compromise after a step one hearing. Six of the sixteen step one denials were appealed to step two and all of them were denied. This would support the hypotheses. The experience under the UFCT contract does not. Eight cases were carried by individuals. Four were upheld at step one. One was withdrawn, one was settled by compromise, and two were appealed to step two where they were denied again.

Group Grievance Data

Charts 11 through 16 set forth information on a much smaller number of grievances which were filed as class actions. These 55 grievances would be expected to have much greater immediate impact than the individual grievances since the class actions applied to many, and in some cases all, unit members. (Of course, decisions on particular individual grievances might also lead to generalized changes in behavior as our comments below will note.)

Chart 11 shows that 36 grievances were filed as Step 2 class actions against individual colleges. Of these, 25 are reflected in the earlier tables - where a Step 1 grievance had been filed at the college. But for 1 of the 36 no Step 1 ever was filed. The number of class actions in which the grievance against a college was upheld were small as was true of individual grievances. Chart 12 sets forth that experience.

The issues in these actions (Chart 13) were very different than those issues raised on behalf of individuals. Chart 13 shows that grievance issues against colleges included issues of class size, method of selection of chairmen, workload

and working conditions. In addition questions of automatic promotion, and rights of certain groups to automatic tenure were raised. Only two salary class actions were filed against colleges. In every case the issues were much broader than personal security or advancement which dominated the individual grievances.

Chart 14 shows that 19 grievances were filed against the university at Step 2, nine by the LC and ten by the UFCT. Only two grievances, one for each group were granted outright, but two LC grievances were granted in part and denied in part (Chart 15).

Unlike the class actions filed against the colleges where the issues were largely the same under each contract (Chart 13), the issues filed against the university were largely different between the units (Chart 16). However, as a review of the issues again shows, questions concerning working conditions were dominant. What annual leave shall counselors who are Assistant to Higher Education officers receive? Do contract observation requirements conflict with the Bylaws? If so, which prevails? The largest single category covered job security, and an examination of the grievances show that credit for past service was sought, a situation which the university did not consider to be covered by the contracts.

Grievance Rate

The first fact of importance about the CUNY experience is that although the number of grievances filed over three years was large - 659 - the rate of grievance filing over the university as a whole was quite low. There were by 1971-72 almost 17,000 covered employees. Furthermore, although the number of grievances grew (although not in every unit or in each contract) over the three years, the percentages fell for individual filings and the average was only 1.4% over the period. It is fair to say that the figures of total activity were undoubtedly greater since our data do not reflect grievances resolved at the complaint stage or prior to a writing at Step 1. Nevertheless, the impression one has from the numbers that there was a deluge of grievances is much modified by the rates. Experience since 1971-72 indicates a much greater number of appeals of non-reappointments so that later data will show higher percentages.

This leads to the second important conclusion. Although workload, salary, facilities, promotional opportunity percentages and the like may affect all or most covered unit members, the vast proportion of individual grievances deal with reappointment, evaluation and tenure. To the extent that individual security is, with salary and benefits, at the heart of any agreement protecting employees, the emphasis on personnel action filings is to be expected. When issues of promotion are added, close to 80% of all the filed grievances at Step 1 concerned personal security or career rights.

The two contracts provide much better and more visible means for the appeal of a termination than existed in CUNY prior to the agreements. Appeals mechanisms did exist but it is unlikely that they were used as often as the contract machinery has been.

It should be clear that these grievances are those of relatively low rank with the least security. The 15 grievances on preferential rehiring are grievances of adjuncts whose rights to security and even to minimal due process have seldom

67

been protected in any university prior to bargaining. The nondiscrimination article was heavily cited (Chart 5) because the UFCT unit which cited it more often covered the ranks most often filled by women and minority groups.

In using the Agreement to gain protection against termination the unit members, especially those in the UFCT, the union took advantage of the technical provisions. Although the university cited timeliness relatively infrequently, the UFCT cited the technical requirement concerning notification 59 times. This is not a criticism; contract requirements are meant to be obeyed. Undoubtedly as we read the files more deeply, one technical provision will dominate the university answers in termination and non-promotion matters: that provision of each contract shielding academic judgment from the review, at least of the arbitrator, the Nota Bene previously cited.

A number of the class grievances dealt with unit stability matters which the new single-unit Agreement will not face. Are counselors lecturers in Unit 2 or Higher Education Officer series employees in Unit 1? Can lecturers in Unit 2 be compelled to accept instructorships in Unit 1? This was an especially volatile issue because it soon became clear that the grounds for terminating lecturers were much more narrow than those for terminating instructors, or indeed anyone else.

Though these personal security issues dominated numerically, the salary grievances, those charging Bylaw conflicts with the agreement, and those attempting to limit workload among other class grievances had a potentially much wider effect.

But one conclusion is clear: the tenured professoriat grieved very little in the first three years.

Room for Growth

If grievance procedures are supposed to be learning experiences for those who administer on either side, then that has not happened here according to our data. The grievances on personal security and advancement did not diminish over time. Apparently departments did not learn to avoid errors where they had occurred. The number of grievances sustained at Step 1 and 2 was low throughout. Two things explain this: the University was upholding actions which arbitrators later reversed—since there were reversals—and the Unions were continuing to support grievances which could not be won. If the low grievance rate shows a somewhat surprising maturity for so young an agreement, this failure to screen out losing issues by the unions and this failure on the university side to sustain grievances later sustained by the arbitrators and/or to learn from the arbitration experience, shows in our opinion a need for learning and growth.

We know that the grievance experience had some vivid impacts although we are unable to trace them college by college:

1. It was harder to terminate lecturers. As the faculty grew over the three years, the UFCT unit containing the lecturers expanded from 5,888 to 7,107 while the LC unit expanded from 5,943 to 9,697. At the same time the almost moribund title of instructor found a new life as our later more detailed numbers will show.

2. By the third year of the Agreement handbooks were produced at some colleges and finally by the university to set forth in non-contract, non-technical language the procedures and dates which had to be met to observe the contract provisions.

The New Contract

Most vividly, however, the impact of the grievance experience can be seen in the new agreement in which the university, primarily, was able to respond to the grievance experience:

1. The single most cited provision of either agreement concerned evaluation procedures. Under the new agreement an employee is estopped from citing violations unless first, within a specified period, he appealed a breach to his Dean and no correction occurred.
2. Violation of personnel file provisions was often appealed. The requirements concerning these files were simplified. Here, however, the employee did gain the right to see his written observation which he had previously been unable to do until Step 2.
3. Unit stability grievances concerning shifting of work will be less prevalent now that the unions have opted to merge. But the university won an increase in exempted titles for assistants to Deans, Presidents, etc.
4. There no longer is a preferential rehiring clause. 15 grievances cited this provision.
5. An employee opting to go first to an antidiscrimination agency cannot later file a grievance (although the law does allow the reverse and the Supreme Court has ruled a provision like this illegal).
6. The "Stated Terms" clause of the new contract will probably eliminate such class grievances as day/night schedules for librarians, whole day schedules in one community college and the like.
7. When a President reverses the highest committee below in personnel actions, he may be required to give written reasons. This clearly arose from at least one arbitrated issue at a community college.
8. If a deficiency in procedure is found by the college, under Section 10.3 of the Successor Agreement as interpreted by the university at least, the procedure may be repaired and if the decision is still for termination, a later letter dated after the date specified for termination letters in the contract may be issued and it will be considered timely. In some cases under the old contract the grievant was reinstated for a semester (adjunct) or a year before a new decision could even be considered because of the notice provision.

Even after department chairmen, various committees, and the college administration believe that every iota of procedure prescribed must be followed, grievances will arise. Until the unit members understand that once procedure has been followed, academic judgment is hard to attack or even uncover, grievances will be lost.

"The Uses of the Past in Bargaining Relationships"

by JUDITH P. VLADECK
Attorney, New York City

Introduction

My reaction to the title was to think in terms of the references made to custom and past practice in labor arbitration. In established relationships it is not unusual for parties to a collective bargaining agreement to urge arbitrators to find past practices binding when the terms of the agreement are silent, or ambiguous, or even in some instances when there is express provision to the contrary.

Practice can be called upon to justify or challenge discipline; to demand continuation of privileges or restrictions on conduct. Volumes have been written on what makes a practice binding: Was the Christmas gift a gift, or did it become a condition of employment?[1]

As I began to think about it, I realized that I had reacted too quickly. I do not think those questions—what practices are binding—to be decided by the arbitrators, have much importance to those of us who are floundering in this new area. For here, in this unchartered world of collective bargaining in higher education, I think the past has a much more fundamental significance than filling in missing elements of a contract. It centers around what the parties bring into their agreement.

As I thought about it, I realized I was going back to arguments and ideas I hadn't heard, or given much thought to, in almost two decades. I also realized that it was not as easy, for example, as arguing to an arbitrator that hospital workers had a right either to a continuation of the precontract practice of free meals or to the money equivalent instead.

I offer you the distillation of my efforts—the sentence which I liked so much that I found my mind returning to it: In the beginning there is the past.

In collective bargaining relationships, as in others, the past is our starting point. But it is never the same history, although shared, that is seen by the parties in looking back. In collective bargaining, recollections depend to a great degree on the parties' attitudes about themselves and their pre-bargaining status.

Whatever other academic achievements the organization of college and university faculties may have wrought, one is clear: It has caused a reexamination of the old, and now otherwise dormant controversy over management's "reserved rights" and the theories of "implied limitations."

Whether the parties come to the beginning of their relationship articulating their attitudes about their "rights" or express them only in their bargaining

[1] See, e.g., Richard Mittenthal, *Past Practice in the Administration of Collective Bargaining Agreements*, Arbitration and Public Policy, BNA 1961, pp. 30-63; S. Lester Block, *Custom and Usage as Factors in Arbitration Decisions*, N.Y.U. Annual Conference on Labor (1962), pp. 311-328.

positions, their views on these basic philosophic questions will color everything in their joint lives.

The "reserved rights" principle which was discussed so fervently in the 50s is very simply (perhaps overly so) stated: Management rights are all-inclusive except as taken away by a specific contractural provision. The extension of that principle, of course, is that all employee rights exist only by contract.

The "implied limitations" advocates would soften that absolute position by arguing that in addition to the rights expressly *granted* by management, there are as well implied limitations on management's otherwise unfettered rights arising from the collective bargaining relationship; for example, limitations, although not express, on management conduct which would dilute or undermine the bargaining unit.

Arthur Goldberg, during his service as counsel to the Steelworkers, described the reserved rights concept:

> "First, there was the Company, and all was well. Then came the Union and injected or created rights for workers which had never heretofore existed. Therefore all rights revert to management except those which specifically are wrested away by means of contractual clauses."[1]

Goldberg, and many other labor spokesmen, and neutrals, have attacked this view of management's "reserved" rights as historical fiction, pointing to the fact that not only do workers have rights—pre-contract, which are not created by the contract—but that in the collective bargain workers surrender many of their pre-contract rights (as, for example, the right to bargain on an individual basis).

Others have suggested that there is no such thing in collective bargaining as a "reserved" right, unless it is a reservation of one or another of the legal rights governing the collective bargaining relationship. Moreover, they say there are no "implied limitations," the collective bargain itself imposing an express limitation on management's rights; that although management continues to have the right to run its business, this is not a unilateral right when its acts affect the employment of any person who is represented by a union authorized to speak in behalf of the bargaining unit.

If the workers view their pre-collective bargaining days as a time when their rights existed, unrecognized by management, and if management views its pre-collective bargaining period as one of absolute power, with workers having no rights, their recollection of things past cannot be the same. Nor can the uses which they try to make of their diverse recollections of the times before their first contract be the same.

The Contract

Whatever the parties bring to their first negotiation, their first contract may be viewed as the basis upon which both parties agree to go forward. But, it is an axiom of labor relations, as expressed in the classic statement of Archibald Cox,

[1]Arthur Goldberg, *Management's Reserved Rights; a Labor View*, Ninth Annual Meeting, National Academy of Arbitrators, 1956, pp. 118-129.

given sanction by the Supreme Court, that a collective bargaining agreement cannot reduce all of the rules governing a community like an industrial plant —or a university—to fifteen, or even fifty pages. "There are too many people, too many problems, too many unforeseeable contingencies to make the contract the exclusive source of rights and duties. . . . Within the sphere of collective bargaining, the institutional character and the governmental nature of the collective bargaining process demand a common law of the shop which implements and furnishes the context of the agreement."[1]

The extension of the recognition that the bargain cannot be limited to documentary construction of language was also analyzed by Cox, who compared the collective bargaining agreement and the commercial contract, pointing out that no judge would suggest a promissory note, a trust or any simple contract contained all the rules required to do justice in actions to enforce the contract or recover damages for its breach. He argued that in dealing with such contracts, the courts recognize that they are executed in the context of the common law and legislation which governs the rights and duties of the parties. The line, he points out, between *interpreting* a commercial contract, and *applying* the principles of contract law is rarely significant, and the court performs both functions. In some cases the terms "interpretation" or construction" are used to describe the process of gathering the meaning of particular words, and reliance is on the "law of contracts" for determining the rights, duties and remedies necessary to the implementation of the contract.

In other cases, a court will pretend that it is engaged in interpretation—using the term loosely, and supplying "implied" conditions and covenants which fairness dictates should go with the bargain, but which the parties had not consciously contemplated and the words do not suggest.

The arbitrator, under collective bargaining agreements, according to Cox, performs the same two functions, interpeting and applying the common law of contracts. His task, however is different in two significant respects:

(1) Because the collective bargaining agreement is more loosely drawn than other contracts, there is much more to be supplied from the context in which they were negotiated;

(2) The governing criteria are not judge-made principles of the common law, but the practices, assumptions, understandings and aspirations of the parties in the going concern.

In suggesting the development of standards which shape grievance arbitration, Cox referred to the familiar sources: legal doctrines, a sense of fairness, the national labor policy, past practice, and perhaps good industrial practice generally.

The Cox view is widely accepted—at least in theory. If it were in practice, it would logically mean that the contract incorporates the pre-union past as a guide for the future; it would require the assumption that the practices which existed are expected to continue except as the agreement would require, or except as new circumstances make such continuation no longer appropriate.

[1]Archibald Cox, *Reflections upon Labor Arbitration*, 72 Harvard Law Review 1482 (1959), quoted with approval by the Supreme Court of the United States in *United Steelworkers of America v. Warrior & Gulf Navigation Co.* 363 U.S. 574 (1960)

This would require the application of the standards of fairness, and even good sense.

But some management spokesmen continue to argue that whatever rights management has not given away in the precise words of the contract remain reserved to it. Union spokesmen to the contrary, usually express the view that the practice in effect at the time of the making of the agreement is part of the understanding, whether spelled out or not, as is the expectation that standards of reason and fairness will be brought to bear in interpreting and applying the agreement.

The Effect of the Differing Views

A. On the Parties

The consequences of these deeply-rooted differences as to the effect of the past are profound. Not only do they control to a great extent the parties' approach to living together, but they influence to a great degree the attitude of the arbitrators who "interpret" or "apply" the agreement.

On the direct level, the manager, who views the contract as the extent of his commitment, feels no constraint about placing into effect unilateral change. The union, which sees the agreement as a broad general outline of a relationship, cannot understand the apparent denial of its existence by such acts. The battle lines are thus drawn.

B. In Arbitration

One of the best expressions of the effect of past practice where a contract is silent is found in a statement of Arbitrator Ben Aarons, who argues that established practice is controlling where the contract is silent.[4] Such situations, he says, "represent the happy coincidence of custom and common sense, and few would disagree that the past actions of the parties have bespoken their intent as clearly as if they had spelled it out in their written agreement." Aaron quoted Harry Schulman's statement that the "object of collective bargaining is not the creation of a perfectly meaningful agreement—a thing of beauty to please the eye of the most exacting legal draftsman. Its object is to promote the parties' present and future collaboration in the enterprise upon which they are dependent."

But what happens to such idealized views when challenged by the arguments based on management's reserved right to manage?

No scholar in this field has argued that management does not in fact require the drawing of procedural lines defining inherent management functions and protecting its right to direct the enterprise, while reserving to the union the right to grieve when it objects.

However, as should be too obvious to require argument (but is not), this procedure by which management acts, and the union grieves, does not create a superior-inferior relationship justifying the belief that the parties to the agreement are not equal.

[4]Benjamin Aaron, *The Uses of the Past in Arbitration*, N.Y.U. Annual Conference on Labor (1955), pp. 1-12, 14

What in the contract, or in the relationship, justifies the belief that management's judgment of "reasonableness", or "efficiency", has greater weight or importance than the union's concern with maintaining reasonable working conditions?

The unequal treatment given to the accomplished fact stems from two sources: management's view of itself as superior, and the arbitrator's confusion as to the nature of the agreement--and acceptance of the employer's view of itself as superior. Flowing from this view is management's assumption that the pre-contract, unilaterally adopted *management* rules, whether accepted by the faculty or imposed on it, is a custom of superior quality, worth perpetuating, even if it is in conflict with the collective bargaining agreement or the new collective bargaining relationship. Unfortunately, too many arbitrators accept this as the context in which they interpret or apply the agreement.

In Higher Education

The discussions of management rights, reserved rights, implied rights, residual rights, that could evoke any passion, or even interest, in the industrial sector are pretty well behind us—twenty years ago.

For those of us coming fresh to the idea of collective bargaining in higher education, it is interesting to see how little we learn from others' experience.

My observations of the use of the past in the management role in colleges and universities is that every one of the cliches used by management of the 40s and 50s have been revived, paraded without embarrassment and with little originality. There is the pervasive sense, promoted by management, that before the union all was well; that the union came and wrested away some concessions (requiring the giving of rights to workers that they never possessed) and leaving to management unlimited power, except as the express word requires otherwise.

In the colleges there are some additional problems related to this kind of role-playing:

(1) The failure to acknowledge that the college is an employer, and that faculty are employees. I have repeatedly been corrected by management (and in one case by a representative of a faculty organization) for carelessly suggesting that faculty members were workers, and I can arouse to fury the representative of a major university by calling his client an "employer".

(2) In referring to the past as justification for the present, colleges seem routinely
   (a) to refer to some mythical, medieval institution having no resemblance to their own establishments; and
   (b) to cling to unilaterally adopted procedures which, by their very existence, run counter to the collective bargaining relationship.

The problems are worsened because colleges speak through administrators who are hired, not to manage, but to interpret the collective bargaining agreement so as to guarantee that the union gets no more than the written word allows.

74

One may question, "How consistent with the university's image of itself is the hired administrator?" Moreover, the procedures which have been developed in administering the collective bargaining agreements perpetuate the mythology. As an example, the grievance procedures at the City University of New York, with which I have some familiarity, are wholly unfamiliar, as I am sure they would be to anyone who has had any experience outside of a college or university in the administration of a labor agreement. Generally speaking, the intent of the grievance procedure is a therapeutic one. It is a planned procedure to get management and union representatives of a similar level to talk over a gripe or a grievance, with the hope that by exposure of the different points of view a resolution of the problem might be achieved.

The very process of layering step upon step from the shop level to the plant level, and ultimately to the level of arbitration, is a device for resolving differences at an early stage, and *within* the institution. While some management are more likely than others to encourage the use of the grievance procedure, and some unions are better equipped than others to use them effectively, there is at least a general acceptance of the process as a problem-solving device. There is also a general acceptance of the process as one in which grievances are subject to mutual exploration and discussion on an informal basis.

In the City University the process has become such a formalized one; it is a wonder that the union uses it at all. The grievance meetings are not called "meetings"; they are called "hearings", suggesting again the superior-inferior relationship we talked of earlier. Rather than viewing the first or second step as an opportunity for management and the union, each as an equal party, to express their views, the very terminology suggests that the union is a supplicant, the one *seeking to be heard*. Can this be an attempt to resolve a mutual problem?

To add to the offense, the decisions which issue from management following such a "hearing" are not, as they are in every other kind of establishment, called "answers", with management saying, "Yes, we go along with you," or "No, we disagree with you." In the university setting they are "decisions" (or perhaps they should be called pronouncements), again elevating management to a level of superiority to that of the grievant union or the individual employee. I don't know what the statistics are on settlements reached, but it is unlikely that such an atmosphere, or such attitude, is conducive to mutually satisfactory resolution of any difference.

Management carries this view of itself into the arbitration process. The University, in the arbitration procedure forgets that in other contexts it takes the position that the University is a happy little club of scholars working together, sharing peer group judgments. It regards the grievant and the union as strangers, enemies, grubby troublemakers, and in effect throws down the gauntlet and says, "Prove it. We are not sharing anything, including any common feeling about the collective bargaining agreement."

Conclusion

Perhaps this is all part of the growing pains. Perhaps it is a reflection of the

75

fact that the administrators who are charged with responsibility for applying the collective bargaining agreement are burdened by the form. One wonders, however, why colleges and universities, which have from time immemorial lived by by-laws and procedural guidelines that appear to be much more complex and formidable than the collective bargaining agreement, have such difficulty. It is to be hoped that, scholars all, they will learn.

"The Inappropriateness of the Past for the Future"

by CARL R. WESTMAN
Director of Employment Relations Oakland University, Rochester, Michigan

First, let me say that I have some reservations about the title assigned to this presentation. I happen to think that the past is not only appropriate in any consideration of the future of academic collective bargaining, I think we have no alternative. What I think is unfortunate is the tendency to confuse the past with the present and thus to make impossible any realistic anticipation of the future. Trade unionism and collective bargaining have arrived in the academy and the lessons we now learn from the past will have to be considered in light of these new conditions.

That is why I would like to make clear that I am talking about bonafide trade unions and their relationships with management. These relationships occur in an academic environment, and to some extent, this fact makes them unique. But, from all I have seen and heard, the similarities between conventional labor relations in American industry and academe far outweigh the differences. In this regard, I tend to agree with Professor Charles M. Rehmus who sees only two models of collective bargaining in general use in the academic setting: the company union model and the trade union model.[1]

The company union model, as he sees it, is the traditional method of university governance that characterizes much of the academic community today, where faculties have developed a system of professional relationships which give them a substantially high degree of autonomy, coupled with regularity and security in their employment relationship.

In the traditional theory, the faculties are organized as a community of scholars. They dominate academic or educational policy and exert major influences on issues relating to college organizational structure. In a manner reminiscent of the legal profession, the faculty controls the education and certification of those entering the profession. They make the decisions on selection, retention and promotion of their colleagues and, in many cases, heavily influence the selection of their supervisors. As Rehmus has said, "Faculty supported by the three basic concepts of academic freedom, professional courtesy and job tenure have, in effect, created a kind of professional self-government which, if it works, can be one of the best of worlds for an employed professional."[2]

This, then, is the situation that allegedly prevails at many American universities and colleges where trade unionism has not arrived and, if you will forgive an observation that is only partly facetious, it sounds like a description of Yogoslavian Workers Committees who hire, fire, select the managers, determine the work product and work standards and establish the wages.

[1] Charles M. Rehmus, "Alternatives to Bargaining and Traditional Governance", *Faculty Power: Collective Bargaining on Campus*, Chapter 9, The Institute of Continuing Legal Education, Ann Arbor, Michigan, 1972.

[2] Ibid.

77

The Trade Union Model

The second model, and the one that I think we are here to talk about, is the conventional trade union model. In this model, Rehmus points to the necessity for three distinct and important characteristics. First, that there is a belief that a "fundamental and permanent conflict of interest" exists between the managers and the managed. Second, that exclusivity (as in the sense of exclusive bargaining agent) is a fundamental element in the organization. And, third, the organization primarily sees itself as a service organization for the individual employee. It is these three elements that make an organization a trade union, no matter how it describes itself or how offended it is by the term.

At this point, let me make it clear that I am not saying that there are not any differences between collective bargaining in the academic setting and in the world of industry, and that some of these differences, if not fundamental, are at least troublesome.

For example, it is my belief that too little is understood by either the academic union or the university administration as to what is meant by the term collective bargaining. There also seems to me to be a general embarrassment with the term, trade unionism. Some academics, it seems, don't mind being formed into an association or guild, or league or academy, but they hate like hell to be called a member of a "union." And I think some of this grows out of the simple notion that they feel they "just aren't like those other guys"—the industrial unionists. But, in fact, I think they are. One of the relevations to me has been the remarkable similarity between the academy and the factory in the kind of issues that come to the bargaining table, that cause impasse in the negotiations and that prompt grievances to be filed. Just as with plumbers, bricklayers, painters and auto builders, professors are concerned about: (1) wages; (2) work load; and (3) job security.

Professors, like industrial workers, worry about how well they are going to be able to support their family and educate their children, and they make their concerns known when they come to the negotiating table. Professors are also concerned about how hard they are going to work, how long they are going to work and what other conditions are associated with this work requirement. And, finally, they are worried about whether they are going to keep their jobs, whether their courses are going to be well received by the student body and whether changes in the curriculum are going to make their particular skills less valuable to their institution. And they reflect these concerns when they begin to negotiate, just like any other organized group of workers.

It is not a surprise, therefore, to discover that academics formed into unions end up acting like most other unionists. But this simple statement fails to sufficiently account for the newness in the process and that this newness has created some conflict and confusion which I hope will be ameliorated by time. For example, it is not entirely an exaggeration to say that past practice to many academics has come to be regarded as the whole of the academic tradition going back all the way to medieval savants. I don't want to deprecate the meaning of this tradition and the value it still has to American higher education, but there is little doubt that past practice, as the term is used in contemporary labor relations, requires a much more limited definition.

Community of Scholars v. Reality

First of all, the vision of the university as a community of scholars coming together to create a university has long since lost any resemblance to reality. Professors are not independent entrepreneurs. A faculty member, particularly in a publically supported university or college, is without doubt an employee and collective bargaining makes that fact even more emphatic. The agreement that results from academic collective bargaining defines that employer-employee relationship and is not fundamentally different from the agreements that establish and control the relationship between unions and managements in all kinds of other industries. Past practice, in this context, then, is a limited means for defining the operative limits of the agreement and a device for clarifying the meaning of ambiguous provisions of the contract.

Past Practice

Now let us turn to some of the specific questions raised by a reliance on the past in a contemporary collective bargaining relationship. As most of you are aware, there is a principle of collective bargaining that holds that it is unrealistic and therefore inappropriate to expect that every detail of the compact made between labor and management will be found within the four corners of the written agreement, even when the agreements are as voluminous and detailed as those found in the auto and steel industries. I think this principle was most effectively put forth by Justice Douglas in the Supreme Court's landmark decision on past practice known as the "Steelworker's Trilogy."[1] It says:

> The collective agreement covers the whole employment relationship.[4] It calls into being a new common law—the common law of a particular industry or a particular plant. As one observer has put it:
>
> *". . .It is not unqualifiedly true that a collective bargaining agreement is simply a document by which the union and employees have imposed upon management limited, express restrictions of its otherwise absolute right to manage the enterprise, so that an employee's claim must fail unless he can point to a specific contract provision upon which the claim is founded. There are too many people, too many problems, too many unforeseeable contingencies to make the words of the contract the exclusive source of rights and duties. One cannot reduce all the rules governing a community like an industrial plant to fifteen or even fifty pages. Within the sphere of collective bargaining, the institutional characteristics and the governmental nature of the collective-bargaining process demand a common law of the shop which implements and furnishes the context of*

[1] United Steelworkers v. American Manufacturing Company, 363 U.S. 564, 46 LRRM 2414 (1960); U.S. Workers v. Warrior and Gulf Navigation Company, 363 US 574, 46 LRRM 2416 (1960); United Steelworkers v. Enterprise Wheel & Car. Corp., 363 US 593, 46 LRRM 2423 (1960).

[4] Opinion of the Court by M.R. Justice Douglas, United Steelworkers of America v. Warrior & Gulf Navigation Company, 363 US 580.

the agreement. We must assume that intelligent negotiators acknowledged so plain a need unless they stated a contrary rule in plain words."[5]

> A collective bargaining agreement is an effort to erect a system of industrial self government. . . . . Arbitration is the means of solving the unforeseeable by molding a system of private law for all the problems which may arise and to provide for their solution in a way which will generally accord with the varient needs and desires of the parties. The processing of disputes through the grievance machinery is actually a vehicle by which meaning and content are given to the collective bargaining agreement.

The above statement, as far as I am concerned, represents a persuasive argument for the broadening of the principle of past practice, but it does not mean that the concept is unlimited or that there are not or should not be severe constraints upon the resort to this principle. It does mean, however, that additional care must be given to the preparation of written agreements and the administration of these agreements.

Let me comment now on some of the problems that I see growing out of a too ready recourse to the principle of past practice. I agree with arbitrator Arthur T. Jacobs when he says that:

> "*A Union-management contract is far more than words on paper. It is also all the oral understandings, interpretations and mutually acceptable habits of actions which have grown up around it over the course of time. Stable and peaceful relations between the parties depend upon the development of a mutually satisfactory superstructure of understanding which gives operating significance and practicality to the purely legal wording of the written contract. Peaceful relations depend, further, upon both parties faithfully living up to their mutual commitments as embodied not only in the actual contract itself, but also in the modes of action which have become an integral part of it.*"[6]

There is, unfortunately, a temptation, especially in immature labor-management relationships, to see past practice as an opportunity to circumvent, amend, or even subvert the written terms of the agreement. It can only produce distrust and inevitably discord when provisions of the contract produced under the pressure of bargaining are frivolously challenged on grounds of customs or past practice. Or, to put it in a slightly different way, attempts to alter terms of the mutually arrived at agreement through the device of building a record of practice in violation of valid commitments is, again, destructive of stable union-management relations.

Providing that both parties are sincerely interested in the development of a stable and peaceful relationship, the answer to these problems lies in an understanding of the importance of the concept of mutuality and a real readiness to

[5]Cox, Archibald, Reflections Upon Labor Arbitration 72, Howard Law Review, 1482, 1498-1499 (1959).

[6]Coca-Cola Bottling Company, 9 LA 197, 198 (1947).

live up to commitments fairly made. All parts of the agreement, written and oral, must be mutually agreed to and understood. Moreover, there is a widely held acceptance of the principle of the primacy of the written terms of the agreement.

To expand this a bit more, let me refer to a statement made by arbitrator Marlin Volz who said, "Day to day practices mutually accepted by the parties may attain the status of contractual rights and duties, particularly where they are not at variance with any written provision negotiated in the contract by the parties and when they are of long standing and were not changed during contract negotiations."[7] In this statement, he points to the importance of mutual acceptability, suggests a responsibility on the interested party to demonstrate the legitimate existence of the practice and refers to the inferiority of practice or custom when standing against the terms of the written agreement.

Arbital Standards

Custom or practice is by its very nature subject to widely varying interpretation. This has not only been a problem for the parties in a union-management relationship, but for the arbitrators who attempt to reconcil these differences as well. This has prompted some arbitrators to set standards for the adjudication of disputes centering on conflicting claims of past practice. One such standard holds that (1) the past practice be unequivocal and there be a clear understanding between both parties that the practice in dispute is factually as stated; (2) that the practice was clearly enunciated and acted upon; and (3) that it is readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both parties.[8] These standards, needless to say, I agree with.

I am sure that all of you are aware that I have not exhausted the subject of past practice, but I would like to comment on a number of additional points if only because they have been of exceptional importance to me. As you know, arbitrators have usually recognized wide authority on the part of management to control methods of operation and to direct the work force and to make changes that do not violate some right of the employee under the written agreement. If there is a management's rights clause in the agreement, arbitrators tend to be even more supportive of management's actions. Nevertheless, there is a tendency for unions, even when they acknowledge a particular managerial right, to point to the non-use of a right as an abdication of that right on grounds of past practices.

At Oakland University, the Board of Trustees has the authority to award tenure with the advice of [illegible]eting through departmental, college and university committees. Recently, a series of grievances were filed holding, in part, that the denial of tenure was a violation of past practices in that the Board had never before denied tenure when positive recommendations had been

[7] Metal Specialty Company, 39 LA 1265, 1269 (1962)

[8] Elkouri and Elkouri, *How Arbitration Works*, Bureau of National Affairs, Washington, D.C., (1973), page 391.

received from the various tenure committees. Our answer, of course, was the the mere non-use of a right does not nullify that right and that this is a well-established principle in the application of past practice. Unfortunately, I cannot report on the outcome of these grievances inasmuch as they are still under consideration by the arbitrator.

Finally, an appropriate and very important application of the principle of past practice is in the area of defining the precise meaning of ambiguous contractual provisions. Here the issue is not whether there has been mutual agreement, but rather the precise nature of what has been agreed upon. In these cases, past practices may properly be used to clarify the intentions of the parties at the time they negotiated the agreement or to reflect the actions of the parties after implementation of the provision in dispute. It is not unusual in such cases for the arbitrator to simply ask both parties to renegotiate the provision when no clear evidence is available as to intentions.

Conclusion

Let me conclude now by re-emphasizing three points that I think are of major importance in any discussion of past practices: first, custom or practice in union-management relations appropriately expands the term and conditions of employment beyond the four corners of the written agreement, but they should not be allowed to be used to thrust open the door to unilateral actions that violate the written agreement.

Second, non-use of an explicitly stated right does not nullify that right on the basis of past practice.

And third, custom and practice is an appropriate device for defining unclear and ambiguous language, but it should also not be allowed to be used as a means for circumventing a mutually agreed upon provision in the contract. That is why vigorous and careful contract administration from the very beginning of the relationship is so vital in protecting the integrity of the collective bargaining agreement and the union-management relationship.

The Effects of Collective Bargaining on Faculty Compensation in Higher Education

by Robert Birnbaum
*Chancellor, University of Wisconsin-Oshkosh**

As of March, 1973, the faculties of 288 institutions of higher education were organized in 199 units for the purpose of collective bargaining (Aussieker and Garbarino, 1973, p. 119-120). Although the noticeable trend towards unionization of faculty seen during the past eight years may now be moderating (Begin, 1973, p. 1), it is clear that collective bargaining will have a significant impact upon the structure and organization of American colleges and universities. At the present time, however, the direction and implications of this impact, while widely debated, are still unclear.

It would be logical to expect that even if no other changes were evident, the advent of collective bargaining would have some measurable effect upon faculty salaries and fringe benefits, referred to collectively in this paper as faculty compensation. Although great controversy surrounds the negotiability of certain matters unique to the academic enterprise, such as institutional governance, compensation packages are almost universally agreed to be legitimate topics for the bargaining table.[1] Aside from conjecture, and the possible inferences to be drawn from studies in other educational sectors, the question of whether faculty collective bargaining has had any measurable impact upon compensation has received surprisingly little research attention.

Angell (1973, p. 95) found "almost spectacular relative gains" for community college faculty salaries in 23 institutions in New York involved in collective bargaining when compared to civil service salaries, four-year college salaries, and cost of living indices from 1968 to 1971. While he believed that such gains are caused at least in part by bargaining, he also conceded that "the sharp rise in salaries might have occurred without the contracts as a result of increased cost of living and the natural competition for professional services." Mortimer and Lozier's (1973, p. 115) analysis of salary increases in unionized four-year colleges concludes that:

> With one or two exceptions, salaries provided for in the contracts analyzed are keeping the faculty even with or slightly ahead of the current rate of national inflation. This could be regarded as a significant achievement given the current financial stringency in higher education. On the other hand, similar raises might have been granted without collective bargaining.

[1] All 23 two-year college contracts examined by Angell (1973, p. 95) and all but two of 14 four-year college contracts reviewed by Mortimer and Lozier (1973, p. 113) had provisions for faculty compensation. Salaries were set by legislation at one state college and by a cabinet officer at one federal institution.

*The author acknowledges the assistance of Ms. Linda O'Connor in the preparation of this article.

It is on the basis of examination of individual contracts such as the examples cited that Fisk and Duryea (1973, p. 213) state:

> Essentially, unions have to protect the economic interests of their members. . . . To a high degree . . .unions have contributed substantially to the economic welfare of their constituencies. The significant raises gained at St. John's University, the upper limit of well over thirty thousand dollars a year at CUNY, the more than 10 percent total over two years in SUNY during a time of budget retrenchment, and numerous other examples

Carr (1973) reached a different conclusion based upon his study of the effects of bargaining. Pointing out that there are some institutions at which it would appear that organized faculties make larger gains in compensation than might otherwise have been the case, he also states that at other unionized institutions the financial gains have been no more than would have been achieved under any circumstances. He concluded that "It is not yet proved that bargaining will be an effective means for the improvement of faculty compensation". (p. 51)

These reports are therefore equivocal in their findings and, for the most part, not based upon systematic collection and analysis of data.

Several studies have attempted to evaluate the effect of collective bargaining on salaries in elementary and secondary institutions and systems, but the results are also equivocal and subject to attack on methodological grounds. Kasper (1970) related statewide teachers salaries to a number of other variables, including the extent of teacher organization, and concluded that "there is no statistically significant positive effect of teacher organization on salaries, once other variables such as income and urbanization are taken into account." (p. 63.) Baird and Johnson (1972) argue that Kasper's findings are statistically and methodologically flawed, and that use of statewide rather than individual school district data is inappropriate.

In another attempt to relate bargaining activity to salary increases, Smith (1972) compared average teacher salaries in the United States to national per capita income and to the gross average annual earnings of production or non-supervisory workers for the years 1951-1962 and from 1963 to 1970-71, which is identified as a period of rapid acceleration of bargaining in public school systems. The comparison indicated no evidence of a substantial acceleration in teacher salary gains to match the acceleration in collective bargaining activity of the past decade. While the data did not show that teacher salaries had increased compared with other groups, Smith argued that bargaining may still have affected salaries by preventing declines or by changing salaries in individual districts without affecting national averages. Thornton (1973) has argued that Smith's conclusions are in error and that the impact of collective bargaining on salaries can be determined only by comparing salaries in school systems with and without faculty bargaining agents. In his own comparison of salaries in 83 large urban school systems, Thornton found absolute salary differentials in favor of systems engaged in collective bargaining ranging from $238 to $472 for the minimum and maximum salaries for teachers with baccalaureate degrees, and $160 to $3,132 for minimum and maximum salaries for teachers with masters degrees. (Thornton, 1971)

The existing anecdotal description of salary changes in higher education, and

the conflicting results of studies in the public school sector, do not provide a very satisfactory base upon which to determine if collective bargaining can be related to compensation in higher education.

The Effects of Bargaining Upon Compensation - An Hypothesis

This study was based upon the hypothesis that collective bargaining has had no effect upon faculty compensation in higher education. In more formal terms, it is predicted that the rate of compensation change in unionized and non-unionized institutions has not been significantly different during the past several years. This statement of the null hypothesis is not made as a statistical convenience, but rather is based upon observations of the social, economic, and political forces facing colleges and universities during the period 1968 to 1973, and the consequent ability of faculty members to apply leverage to increase salary and fringe benefit packages.

First, faculty compensation did not appear to be a major factor provoking interest in collective bargaining during this period. It is believed that interest in collective bargaining is a function of two factors: first, the legal opportunity to do so, and second, faculty dissatisfaction with their working environment, including such factors as economic benefits, working conditions, decision-making authority, rapport among faculty and between faculty and administration, public support of higher education, and faculty independence and freedom in carrying out its duties. (Begin, 1973, pp. 12-14)

It is generally believed that "The extension to government workers, particularly at the State level, of the right to organize for collective bargaining is the most important single reason for the present form and growth of academic unions." (Garbarino, 1973, p. 3) Public college and university employees were therefore forced into a bargaining relationship, not due to internal pressures, but because of a recognition that in a unionized public sector only those institutions which were similarly organized would be able to compete for public funds. (Doherty, 1973, p. 1)

Given the opportunity to participate in bargaining, and the external pressure to do so in order to meet competition from other sectors of public employment, it must also be recognized that the period of the early and mid-1960's was one characterized by growing faculty dissatisfaction, particularly in the two-year colleges and the emerging four-year colleges and universities. Rapid growth in enrollments, changes of mission from single to multi-purpose, increasing centralized review by statewide boards, and in many cases, a history of administrative authoritarianism led to increased pressure on many campuses for changes leading to more appropriate roles for faculty in institutional governance. In reviewing faculty unrest in 1967, a task force composed of faculty members reported that faculty dissatisfaction was being caused by rising expectations of professionalism and changes in educational organization, rather than concern with salaries. They indicated that "In general, . . . our field studies do not indicate that economic factors *per se* have been an important consideration underlying recent expressions of faculty unrest." American Association for

Higher Education, 1967, p. 13)[4] although it was also noted that faculty were concerned about the internal allocation of compensation resources between and among departments and ranks. (p.29)

Salary data collected and published annually by the American Association of University Professors (AAUP) support the belief that during the mid-1960's faculties had good reason, by and large, to feel satisfied enough with their economic status so that salary increases would not be the most pressing matter on an agenda of faculty concerns. Although the 1968-69 AAUP report on the economic status of the profession (AAUP, 1969) was titled "The Threat of Inflationary Erosion", and raised the spector of threats to faculty compensation levels, the faculty's major complaint was that the rate of increases had merely slowed down from the year before. In fact, the AAUP reported was that faculty salaries that year had increased "only" 7.2%, while the consumer price index rose 4.2%, meaning that " . . . over-all real compensation went up *only* about three percent" (emphasis added). In fact, the results of the AAUP biennial survey, which unfortunately includes a biased sampling of 36 institutions, indicated significant changes in faculty real salary levels during the fifteen-year period from 1953 to 1968. For example, in 1953 the consumer price index was 192.6, using 1939 as the base year with an index of 100, while a comparable relative faculty salary index stood at 169.0, showing a decrease in real purchasing power during the period. By 1968, however, the consumer price index which had risen to 250.4 on the same base was far outstripped by the faculty salary index, which then stood at 370.3. In fifteen years, therefore, the index of average faculty salary *adjusted* for price changes rose from 87.7 in 1953 to 147.9 in 1968 (AAUP, 1969, p. 194).

This is not to say that the professoriate was completely satisfied with the progress that had been made. Carr (1973) points out that professors are troubled by their compensation compared with that of other professors, such as law and medicine, even though he acknowledges that ". . . the years 1957 through 1969 saw perhaps the sharpest increase in the compensation of academicians in the present century." (p. 45)

Based upon these data, it is not unreasonable to believe that concern with influence in decision-making rather than dissatisfaction with compensation levels was the primary source of faculty unrest which promoted unionism in the late 1960's, and to predict that this should be reflected by an emphasis upon negotiations affecting goverance rather than salary at the bargaining table. This view was supported by an A.F.T. representative who indicated in 1973 that issues of tenure, job security, and grievance procedures had been more important in faculty collective bargaining than had wages and fringe benefits. (Semas, 1973, p. 6)

While it is probably true that improvement of salaries may not have been the

[4]There are, of course, exceptions to this generalization. The organization of the faculty of the University of Rhode Island has been attributed by its president *solely* to a salary dispute, saying, "Salary was the only substantial issue. There were no significant problems about academic freedom or faculty participation in governance, for example." (Baum, 1973, p. 18). Angell (1973) found low salaries to be a serious factor in the unionization of community college faculties in New York and Michigan.

most compelling interest of faculty involved in collective bargaining, it is also probably true that increased compensation through collective bargaining would have been difficult to achieve even if this had been a primary goal.

To appreciate the reasons for this, it must first be understood that collective bargaining is almost exclusively a phenomenon of public institutions. The 2% unionized independent colleges and universities comprise about 8% of all institutions involved in collective bargaining, although almost 56% of all colleges and universities in the country in 1971 were non-public (American Council on Education, 1973, p. 72.117). The vast majority of unionized institutions therefore rely on public appropriations for their funding. For many reasons the late 1960's was not the most auspicious period to seek unusually high increases in faculty compensation. Public support of higher education had increased enormously in the previous decade, rising from $1.5 billion state and local tax dollars in 1959 to $5.5 billion in 1968-69. (American Council on Education, 1973, p. 72.102) At the same time, other public concerns were exerting increasing pressure for the allocation of additional revenues, and it might be expected that many of these claims would receive priority over salary increases for an already comparatively highly paid sub-set of public employees which had already received unusually high salary increases during the previous ten years. To grant such increases would not only make more difficult the problems of state resource allocation, but might also have a spill-over effect on salary demands by other public employees. (Kasper, 1970, p. 60)

The economic realities within the profession itself also appeared to lend themselves towards increased interest in job security and an extremely weak bargaining position for increased compensation in the academic marketplace. During the period 1968 to 1972, the interrelated dynamics of increased Ph.D. production, slowdowns in enrollment increase trends, and high faculty tenure rates inexorably led to stiff competition for a decreasing number of faculty positions. An oversupply of applicants for vacancies would make it even more difficult to bargain strongly for increased compensation levels.

Political considerations were probably as critical as economic ones. Legally barred in most states from the ultimate union sanction of the strike, it is doubtful that even with this power the faculty bargaining position would have been greatly enhanced. Colleges and universities do not perform the same student custodial functions which are a critical componet of the public schools, and therefore are less subject to the pressure of irate parents forcing a quick settlement. Nor would a strike create potential economic losses to the "employer" which would tend to lead to salary increases as a means of completing a contract. In fact, whether organized or not, the political clout of college professors was, and is, extremely limited. As one observer noted, perhaps somewhat inelegantly, ". . . college faculties are among the last to bargain and they have the least power in the legislature. Government white-collar workers, blue-collar workers, nurses, and teachers all go to the same public trough for money. It stands to reason that the strongest will drink the deepest, and at present, college faculties have yet to find the trough." (Graham, 1973, p. 57)

The lack of expertise in political matters would be further compounded by the backlash of campus unrest in the late 1960's, and the consequent possibility that legislators would win the favor, rather than the enmity, of the voters by

standing firm against great financial increases for the support of higher education.

It can also be argued that the governance structure of public institutions would tend to make bargaining over such matters as participation in decision-making and other non-economic issues more productive and less difficult than bargaining about salaries and fringe benefits. While internal governance controversies can usually be resolved at the campus, or in some cases the state level of a higher educational system, economic packages usually require in addition the consideration of other units of state administration as well as the legislature. This makes salary negotiations extremely awkward, since there is often no single agency with the clear authority to bargain such issues in good faith. (Wollett, 1973, p. 28; Garbarino, 1972, p. 5) Moreover, from the point of view of state fiscal offices, it is preferable to trade off increased salaries for "no-cost" items such as elected department chairmen.

For all these reasons, it was believed that faculty collective bargaining efforts would focus primarily on non-economic issues, and that unionization would not have any significant impact upon compensation in higher education.[1]

The Design of the Study

An experimental design was developed to provide evidence to support or reject the hypothesis. The design was based upon a comparison of average faculty compensation in September, 1972 at matched institutions with and without collective bargaining.

The matching process began with a listing of each of 290 institutions involved in collective bargaining during the 1972-73 academic year. A base year than had to be determined against which compensation increases could be measured. The base year of 1968-69 was selected because it offered a period of five years against which to measure changes in 1972-73, and because the major impetus for bargaining began that year, with only 13 institutions unionized prior to 1968 (Aussieker and Garbarino, 1973, p. 120). Average institutional compensation levels for the base year were determined through data collected in the annual AAUP survey of the economic status of the profession (AAUP Bulletin, 1969). Of the 290 institutions bargaining in 1972-73, only 118 were listed in the AAUP survey and were retained in the sample. Some of the unlisted institutions were not in existence in 1968-69 and others chose not to participate in the AAUP study. The exclusion of institutions for which base year data were not available may introduce a bias into the study. While the effects of this bias are unknown, it should be pointed out that over half of the non-participants were two-year colleges.

The AAUP data were then reviewed to find a matching institution for each of

[1] This belief seems to be shared by researchers in the field as well. Whether purposefully or inadvertently, a recent study on factors affecting compensation in higher education (Cohn, 1973) and a study of the same topic now in progress (American Association of University Professors, 1973, p. 203-5) sponsored by AAUP and NSF do not appear to consider the presence or absence of collective bargaining to be important enough to include it in their multi-variate analyses.

88

the 118 colleges and universities remaining in the sample. Institutions were matched on the basis of control (public, independent, church related), level (university, four-year college without master programs, four-year college with masters programs, two-year college), and compensation level in the base year. Only institutions for which such matches could be made were retained in the sample. In addition, an attempt was made to match institution size, as measured by the number of full-time faculty employed, and geographic location. Where it proved impossible to match a college with an institution in the same state, an attempt was made to select an institution in a contiguous state. In some cases, however, control over size and location was not possible if the integrity of control, type, and base year salary was to be maintained. Of the 118 institutions, matches were found for 88. Inability to match was caused either by failure to participate in the later 1973 AAUP study, or by institutions whose average compensation in 1968-69 was so high that no comparable institution could be found with the same control and level. Unfortunately, included in this category were all of the four-year institutions of the City University of New York.

Average compensation levels in 1972-73 were determined by analyzing data contained in the 1973 AAUP survey (AAUP, 1973). Since average compensation levels were no longer included in the 1973 survey, they were calculated for each of the 88 collective bargaining and non-collective bargaining institutions by weighting the average compensation for each academic rank by the number of faculty in that rank.

Results

A comparison between average compensation levels of the 88 match institutions in 1968-69 and 1972-73 is shown in Table 1.

Table 1

Average Compensation of Institutions With and Without Collective Bargaining in 1968-69 and 1972-73

		Average Compensation		
Institution	**N**	**1968-69**	**1972-73**	**Difference**
With Collective Bargaining	88	$12,341	$16,681	$ 4,340
Without Collective Barg.	88	$12,294	$15,857	$ 3,563
Difference		$ 47	$ 824	$ 777

The data in Table 1 indicate that collective bargaining institutions had higher compensation levels by $47 in 1968-69, and that this difference increased to $824 in 1972-73, for a net gain of $777 over non-collective bargaining institutions. The compensation increases of both groups of institutions over the five-year period were subjected to a two-tailed t-test and found to be significantly different at beyond the .01 level of confidence ($t = 5.51$).

The hypothesis that the rate of compensation change in unionized and non-unionized institutions had not been significantly different is therefore not supported.

Recognizing that the increase in compensation levels seen in collective bargaining institutions may differ among categories of institutions, the 88 matched colleges and universities were divided into four groups: public universities, public four-year colleges, public two-year colleges, and independent and sectarian institutions. Although the latter group included independent and sectarian institutions at both the university and college level, the sample was so small that no further meaningful division of the groups could be made. A comparison of compensation in 1968-69 and 1972-73 for each of these four groups is shown in Table 2.

Table 2

Average Compensation of Four Categories of Institutions With and Without Collective Bargaining in 1968-69 and 1972-73

Group	N Matched Pairs	1968-69		1972-73		Differences		
		Coll. Barg.	Non Coll. Barg.	Coll. Barg.	Non Coll. Barg.	1968-9	1972-3	Net
Public Univ.	9	$14,779	$14,532	$19,558	$18,428	$ 247	$1,130	$ 883*
Pub. 4-Yr College	40	12,127	12,111	16,403	15,230	16	1,173	1,157*
Pub. 2-Yr College	29	11,930	11,898	16,350	15,943	32	407	375
Ind. Col. & Univ.	10	12,202	12,165	16,163	15,788	37	375	338
	88	$12,341	$12,294	$16,681	$15,857	$ 47	$ 824	$ 777

* significant at the .01 level of confidence

As seen in Table 2, universities were the most poorly matched group initially, with a $247 difference in compensation between the matched groups in 1968-69. By 1972-73, however, this difference had increased to $1,130, a net change of $883 favoring institutions in collective bargaining. This increase was significant at the .01 level of confidence ($t = 3.61$). Of the nine pairs of institutions the five-year increase was greater for the institution involved in collective bargaining in all but one case.

Public four-year colleges showed the greatest difference in compensation changes between 1968-69 and 1972-73 related to collective bargaining, with unionized colleges showing a five-year compensation increase $1,157 higher

than non-unionized colleges, adjusted for a minor initial difference in the base year. The differences in the compensation increases for the two groups was significant at well beyond the .01 level of confidence ($t = 6.65$). As seen with the public universities, the direction of the differences in each matched pair was remarkably similar; in only four of forty pairs did the compensation of the non-unionized institution exceed that of the unionized one.

Although the average five-year compensation increases in the group of 29 two-year colleges and 10 independent institutions both favored collective bargaining institutions by $375 and $338 respectively, these differences were not statistically significant for either ($t = 1.25$ for two-year colleges, and $t = .55$ for independent institutions). In seven of the ten independent institutions, and in only 16 of the 29 public two-year colleges, compensation increases over the past five years were higher in the unionized institution than in the non-unionized one. On the basis of these data, it does not appear that collective bargaining has been effective in increasing compensation of faculty in public two-year and independent institutions as a group, although it may be that it has been effective in specific institutions.

Effects of Rank Distribution on Compensation Levels

The average faculty compensation in any institution can be affected by two variables: compensation at each rank, and the distribution of faculty by rank. Increases in average compensation levels may be caused either by increasing the compensation of one or more ranks or by increasing the proportion of faculty at the higher, and thus more remunerative, ranks. Thus far, faculty bargaining has been viewed within the context of salary and fringe benefit negotiations. In view of the fact that rank distribution has also been considered a negotiable item in some contracts, it is useful to examine changes in rank distribution during the period 1968-69 to 1972-73 to see if compensation changes may be related to rank changes.

In the nine paired public universities, the proportion of senior faculty (associate and full professor) in collective bargaining institutions rose from 52 percent to 56 percent of all full-time faculty during the period 1968-69 to 1972-73. At the same time, the proportion of senior faculty in non-collective bargaining universities rose from 52 percent to 64 percent. The greater growth in the proportion of senior faculty in non-unionized universities which would have a positive effect upon compensation increases, means that the data in Table 2 probably understates, to some extent, the differential in compensation increases found in collective bargaining institutions caused directly by salary and fringe benefit negotiations. Changes in academic rank distribution in public four-year colleges (47 percent to 52 percent senior faculty in unionized, and 46 percent to 53 percent in non-unionized institutions) were not large enough to have any significant effect on differences in compensation levels.

Discussion and Summary

Analysis of changes in compensation levels in 88 pairs of matched institutions during the period between 1968-69 and 1972-73 indicates significantly greater

increases in institutions engaged in collective bargaining as of the spring of 1973. Average compensation increases were higher in each of four institutional categories (public universities, public four-year colleges, public two-year colleges, and independent and sectarian colleges and universities) although these differences were only statistically significant in the first two categories. However, these findings do not necessarily mean that faculty collective bargaining has been the causative factor for increases in public universities and four-year colleges, nor that collective bargaining has had no impact upon public two-year colleges collectively or individually, nor upon independent institutions individually.

A brief comparison of the number of public universities and four-year colleges in the sample, the number of such institutions in the 1968-69 AAUP survey, and the total number in the universe will indicate one of the problems of drawing generalizations from the data. There were 9 public universities engaged in collective bargaining in 1968-69. Each of these was included in the sample and matched with one of the non-collective bargaining institutions among the 99 public universities included in the AAUP survey. However, the 99 institutions represented only 74% of all public universities operating in 1968 (American Council on Education, 1972, pp. 72-112). A similar situation exists for public four-year colleges. Of 73 such institutions with collective bargaining agents, only 43 (63%) were listed in the AAUP survey in 1968. Matches were selected from among the total of 265 such colleges listed by AAUP, which in turn included 92% of the 287 such institutions in existence at that time. The statement that collective bargaining is related to increased faculty compensation must therefore be understood to be dependent to some extent upon whatever biases may be related to an institutional decision to participate in the AAUP survey.

Assuming that these biases are not significant, it is reasonable to state as an hypothesis that faculty collective bargaining is a cause of increased compensation levels. An alternative hypothesis is equally tenable, however. It has been stated that the growth of faculty unionization is directly related to state legislation permitting collective bargaining in the public sector. In fact, by 1972 all public four-year colleges but one were located in states with collective bargaining laws (Garbarino, 1973, pp. 4-5). Earlier, the possibility was mentioned that public officials might be reluctant to fund large increases in faculty salaries because of the possible spill-over effect upon other public employees. It is also possible, however, that the spill-over effect has worked the other way and that faculty benefits have been tied to increases won by other, and perhaps more powerful, public employee organizations.

Just as possible biases in the selection procedures may have affected the finding that public universities and four-year colleges with collective bargaining received greater compensation increases than those without bargaining, so similar biases may have affected the finding of no significant differences in compensation related to collective bargaining in public two-year and independent colleges.

Public two-year institutions pose the most critical problems in this regard. Of the 594 such colleges in 1968 (American Council on Education, 1973, p. 72-122), only 123 (21%) participated in the AAUP survey that year, and only 50

of the 182 (27%) involved in collective bargaining are included in the AAUP report. For the purposes of this study, 29 of the 50 could be matched with non-unionized institutions. The general applicability of the findings of this study to public two-year colleges as a group are therefore uncertain. Of the 23 independent institutions involved in collective bargaining in 1973, 10 were included in this study. Again, the validity of the sample is made questionable by the fact that only 581 of 1,472 independent institutions are listed in the 1968 AAUP survey. An additional problem is created by the composition of this group which includes institutions at all levels and under both independent and denominational control.

It should also be noted that collective bargaining is a much more recent phenomenon in the independent college sector. Since the National Labor Relations Board accepted jurisdiction over these institutions only in 1971 (Doherty, 1973, p. 3), compensation increases which may have been, or are, in the process of being negotiated may not be adequately reflected in September, 1972 AAUP data. This time lag may also be a factor in analyzing public institution data as well. It is known that 44% of all unionized institutions in 1973 were organized by 1970, 79% by 1971, and 86% by 1972. (Aussieker and Garbarino, 1973, p. 120). The data in this study thus include some institutions whose negotiations might not have been reflected in 1972-73 compensation data, except possibly to the extent that unusually high salary increases may have been granted in preceding years as part of a management attempt to avoid unionization altogether. The fact that the lack of collective bargaining in higher education is such a recent phenomenon also makes it impossible to study compensation increases on a longitudinal basis. Whether increases are likely to occur during the first negotiation and then stabilize, whether they will show a cumulative increase from year to year, or whether they will follow some other pattern is an important question deserving further study.[4] It would also be of interest to know whether the increases seen in public institutions will be concentrated in certain years, and whether the rate of increased compensation will tend to increase, decrease, or remain stable over the next several years.

For both public two-year and independent institutions, therefore, the most positive statement that can be made is that the data do not indicate any significant effects related to collective bargaining for the institutions examined. There is also no reason to reject the possibility that at individual institutions under certain conditions collective bargaining has been effective in increasing faculty compensation levels.

Given the results seen in the public universities and public four-year college groups, it is interesting to speculate on the reasons that collective bargaining appears to be related to significantly higher compensation increases. In doing so, we assume that these increases have been caused directly by faculty bargaining rather than by a spill-over from other public employee actions.

[4]Only at the public two-year colleges has collective bargaining affected a reasonable number of institutions over a relatively long period of time. Based on the data collected for this study, compensation increases were found to be slightly higher in 11 two-year colleges with union representation prior to 1969, than in 13 which organized after that date. However, the increases were still not significantly different from those seen in non-organized institutions.

rather than by a spill-over from other public employee actions.

In arguing for the original null hypothesis, it was indicated that salaries and fringe benefits did not appear to be a major factor in faculty dissatisfaction and that therefore compensation would not appear to be a major issue at the bargaining table. This, of course, might not be true if the institutions involved in collective bargaining were among those with the lowest compensation levels. If such were the case, a greater emphasis on economic concerns could be expected at the bargaining table.

Unfortunately, AAUP data are not analyzed so that it is possible to identify the compensation levels of various categories of institutions. It is possible, however, to determine how the average compensation of these institutions would have been rated by rank against the AAUP scales of 1968-69.

A review of these data indicate the the salary schedules of the nine universities were among the top 4% in the country in three of the four academic ranks, and on the top quarter in the fourth. Three of the four ranks in public four-year colleges fell in the top quarter of the compensation distribution, with the exception being the rank of full professor which fell somewhere between 28% and 68% of all institutions.

The high compensation increases seen in collective bargaining institutions are therefore perhaps even more remarkable because they occurred in institutions which were already in the top compensation categories. The current high compensation levels at City University of New York, for example, are often cited as evidence of the effectiveness of collective bargaining (Mortimer and Lozier, 1973, p. 114). It is often forgotten that in 1968-69, one year before CUNY entered collective bargaining, six of its colleges, including one of its community colleges, were among the 25 most highly compensated in the country, and two of them were in the top 10 (American Association of University Professors, 1969, p. 197).

The proposition that "Faculty will experience greater dissatisfaction in institutions that are unable to provide them with the remunerate benefits that other institutions may be offering" (Begin, 1973, p. 17) does not appear to be supported, at least to the extent that unionization is an index of dissatisfaction. It also may be, however, that dissatisfaction is a function of the reference group being considered. A relatively highly paid faculty member at a small independent two-year college may feel satisfied if he compares himself with other persons similarly situated, but poorly used if he relates to the large, prestigious research university down the road.

During a period when faculty in general did not appear distressed over compensation packages, institutions with much higher than average salaries and fringe benefits were organizing and succeeding in increasing their advantage over their sister institutions, even further. Why this was happening is a matter for further research, but one possible explanation may be advanced. Once an institution is unionized, the bargaining agent must produce results which are satisfactory to its constituency at a level high enough to protect itself from attack by other potential bargaining agents. These benefits must be seen by the faculty as being in excess of that which would have been achieved had bargaining not been initiated, and could be based either on economic or non-economic gains. As indicated earlier, during this period of time, faculty interests seemed

to center on non-economic matters and particularly upon increasing the faculty's role in governance and decision-making. It may be that administration resistance to demands for increased faculty influence, or in some cases resistance to the contractual codification of powers which the faculty already enjoyed through traditional governance, forced bargaining agents to fall back to a secondary interest in increased compensation as a means of reaching agreement. If this conjecture is accurate, it means that compensation schedules could have been more closely controlled, had college management been willing either to yield on governance issues or to face the consequences of union sanctions. It may be that faculty may have been willing (or forced) to trade off other benefits such as improved student-faculty ratios or reduced class size for increased compensation. (Doherty, 1973, p. 3)

Such tradeoffs may be exemplified by the decision of the St. John's University faculty negotiators to "gradually sacrifice" significant demands related to reduced class size and similar issues in order to gain additional compensation advantages from the University. (Hueppe, 1973, p. 184) Whether these tradeoffs will ever be carried to the extremes threatened by some of the more vehement critics of faculty bargaining, leading to increased salaries at the cost of academic freedom or some other major non-economic matter, remains to be seen.

95

REFERENCES

American Association of Higher Education, *Faculty Participation in Academic Governance*, Washington, D.C., 1967.

A Fact Book on Higher Education, Third Issue, American Council on Education, Washington, D.C., 1972.

Angell, George W., "Two Year College Experience", in E.D. Duryea, *et al. Faculty Unions and Collective Bargaining*, Jossey-Bass, San Francisco, 1973.

Aussieker, Bill and J.W. Garbarino, "Measuring Faculty Unionism: Quantity and Quality", *Industrial Relations*, 12:117-124, May, 1973.

Baird, Robert N. and John H. Landon, "Comment", *Industrial and Labor Relations Review*, 25:410-423, April, 1972.

Baum, Werner A., "A President's Experiences", in Raymond G. Hewitt (ed.), *The Effects of Faculty Collective Bargaining on Higher Education*, New England Board of Higher Education, Wellesley, Massachusetts, 1973.

Begin, James P., *Faculty Bargaining: A Conceptual Discussion*, Final Report, Project No. 1-B082, Office of Education, U.S. Department of Health, Education and Welfare, February, 1973.

Carr, Robert K., "The Troubled Professor", in Raymond G. Hewitt (ed.) *The Effects of Faculty Collective Bargaining on Higher Education*, New England Board of Higher Education, Wellesley, Massachusetts, 1973.

Cohn, Elchanan, "Factors Affecting Variation in Faculty Salaries and Compensation in Higher Education", *Journal of Higher Education*, 44:124-135, February, 1973.

Doherty, Robert E., "The National Labor Relations Act and Higher Education: Prospects and Problems", *NACUBO Professional File*, National Association of College and University Business Officers, Washington, D.C., 1973.

Garbarino, Joseph W., "Faculty Unionism: From Theory to Practice", *Industrial Relations*, 11:1-17, February, 1972.

Garbarino, Joseph W., "Emergence of Collective Bargaining", in E.D. Duryea, *et al., Faculty Unions and Collective Bargaining*, Jossey-Bass, San Francisco, 1973.

Graham, David L., "Bargaining Process", in E.D. Duryea, *et al., Faculty Unions and Collective Bargaining*, Jossey-Bass, San Francisco, 1973.

Hueppe, Frederick E., "Private University: St. John's", in E.D. Duryea, *et al., Faculty Unions and Collective Bargaining*, Jossey-Bass, San Francisco, 1973.

Kasper, Hirschel, "The Effects of Collective Bargaining on Public School Teachers Salaries", *Industrial and Labor Relations Review*, 24:57-71, October, 1970.

Mortimer, Kenneth P. and G. Gregory Lozier, "Contracts of Four-Year Colleges", in E.D. Duryea, *et al., Faculty Unions and Collective Bargaining*, Jossey-Bass, San Francisco, 1973.

Semas, Philip W., "Administrators Get Tough in Bargaining With Faculties; Some Negotiations Slowed", *The Chronicle of Higher Education*, July 2, 1973, pp. 1, 6.

Smith, Allen W., "Have Collective Bargaining Negotiations Increased Teachers Salaries?", *Phi Delta Kappan*, 54:268-270, December, 1972.

"Surviving the Seventies: Report on the Economic Status of the Profession, 1972-73", *AAUP Bulletin*, Summer, 1973, pp. 188-258.

"The Threat of Inflationary Erosion: The Annual Report on the Economic Status of the Profession, 1968-69", *AAUP Bulletin*, Summer, 1969, pp. 192-253.

Thornton, Robert J., "The Effects of Collective Negotiations on Teachers Salaries", Quarterly Review of *Economics and Business*, 11:37-46, Winter, 1971.

Thornton, Robert J., "Collective Negotiations and Teachers Salaries: A Dissenting View", *Phi Delta Kappan*, 54:682, June, 1973.

Wollett, Donald H., "Issues at Stake", in E.D. Duryea, *et al., Faculty Unions and Collective Bargaining*, Jossey-Bass, San Francisco, 1973.

Do Students Have a Place in Collective Bargaining?

by DONALD E. WALTERS
Deputy Provost, Massachusetts State College System

When in the late 1960's the faculties at several 4-year institutions of higher education first took collective bargaining seriously, the reaction of administrators ranged from concern to alarm. Many saw the event as the awakening of a potential giant, as faculty at public institutions became aware of the power that lay hidden in the labor relations statues which gave them collective bargaining rights in nearly 1/3 of the United States; and with the 1970 Cornell University case decision of the National Labor Relations Board, faculty at private institutions were granted similar rights.

College and university administrators in those early days were dismayed—as indeed were many faculty and some students—by the potential effect of collective bargaining upon the institutional structures of higher education.

Questions Raised by Bargaining

The academic community wondered what impact faculty unionization would have upon their traditions, and what changes it might force in the existing patterns of control within the university? Specifically: What would be the economic impact of collective bargaining upon institutional budgets, (many already in or near deficit as a result of inflation, and shrinking enrollments)? To what extent would faculty professionalism be modified? What would be the impact of collective bargaining on academic decision-making? Would the adversary basis of collective bargaining destroy collegiality as an alternative system for conflict resolution? What would become of the faculty senate as a model for campus governance? Would collective bargaining so freeze the development and long-range planning functions of collegiate institutions that growth and change would become virtually impossible? What, in short, would the American university look like by 1980 under the impact of faculty collective bargaining?

In 1974, with 62 four-year colleges and universities now represented by a bargaining agent most of these questions, alas still remain unanswered. If anything, the list has grown. Not the least important of the newer questions added is this: *What will be the effect of collective bargaining upon the rights, interests and status of students?*

For students the question is a tactical one: How to obtain a position at the bargaining table? For faculty and administrators it is a policy question: Upon what basis can a student role in negotiations be justified?

Efforts at Student Involvement

As early as October 1970, the Board of Trustees of the eleven Massachusetts State Colleges sought to obtain a participatory role for students at the bargaining table, and to articulate a rationale to support that move. This marked the

first major attempt in the country to transform the traditional bilateral bargaining process into a tri-partite endeavor. About the same time, students at the Brooklyn Center of Long Island University were being admitted to bargaining sessions as observors. More recently, at Stockton State College in New Jersey and at Ferris State College in Michigan students have tried to develop other methods for securing a student role in the bargaining process. At Stockton, they executed an agreement with the AFT local in February 1974, which purports to preserve a number of specific student rights. In my view, the agreement is unenforceable and has no legal binding power. A copy of this agreement is attached as an appendix. At Ferris, a student sits as a member of the administrations' negotiating team. Administrators on the Ferris bargaining team have reportedly granted an effective veto to this student so that, by a mutual understanding between the student and the administration, no administrative proposal will be made to the union without concurrence by the student.

It is clear that while administrative and faculty bargaining teams are still generally reluctant to grant students a place at the collective bargaining table, the level of student demand for a voice is increasing dramatically. The proceedings of the "National Student Colloquy on Collective Bargaining" held in the Fall of 1973 in New York under Alan Shark's chairmanship, need only be consulted to verify this escalation of student concern across the country.

Lack of Legal Status

The question of *whether* students have any place in collective bargaining is brought more sharply into focus by the question of *what* is being bargained—that is, by the specific matters which the two negotiating parties agree fall within the definition of scope of bargaining. As non-employees, students have no legal claim to a seat at the bargaining table under any existing state labor relations statute, or under the National Labor Relations Act. Students are simply not parties in any legal sense in collective bargaining and have no right in law to be involved in negotiations. Nevertheless, there is nothing to prevent the parties themselves (the Board of Trustees as employer, and the faculty union representing the unit of professional employees) from voluntarily inviting students to participate in negotiations at any level and with whatever role they deem appropriate. Neither are the parties prevented from including the students in the provisions of the contract itself. It is important to note, however, that the terms of a collective bargaining agreement benefiting students would bind *only* the board and the union—not the students; students would stand as third party beneficiaries, and as such would have no legal responsibility to abide by the terms of the agreement. Thus, the board and the union can rely only upon the students' good faith and moral commitment to carry out their assigned duties under the contract.

The central question in my view is not, therefore, *whether* the parties to collective bargaining have the authority to assign a role to students either in table negotiations or in the contract itself (they may do so at any time by mutual consent), but to *what extent* student interests are directly affected by the matters being bargained. Where a case can be made that their interests are affected, then I believe, a case can be made for their participation.

Two Basic Approaches

Since the advent of faculty bargaining at 4-year colleges and universities, five or six years ago, two fundamentally different approaches to table negotiations have emerged. One seeks to close the scope of negotitions; the other, quite deliberately, to widen it. The first attempts to define a condition of employment for faculty as consisting of only wages, hours, grievance procedure, fringe benefits and related conditions; the second liberally interprets a condition of employment for faculty to include, in addition to wages, hours, fringe benefits, and grievance procedure, such matters as academic freedom, the process of faculty evaluation, the standards for faculty appointment, promotion and tenure, the procedures for determining faculty workload, and the participation of faculty in the campus decision making or governance structures.

Colleges and universities which adopt the first or narrower definition of a condition of employment no doubt, have the stronger case for excluding students from the table. The extent of legitimate student interest in matters like faculty salaries, grievance procedures, leave policies, retirement, and life and health insurance, is hard to demonstrate. Where negotiations are limited to these issues students have a heavy evidenciary burden in showing that their interests are directly affected. However, most of the approximately 40 collective bargaining agreements existing today at 4-year institutions have included one or more issues like faculty evaluation procedures, faculty workload, or campus governance; any one of these matters sufficiently effect the legitimate interests of students to warrant their participation in the collective bargaining process.

The Massachusetts Experience

A brief description of the collelctive bargaining experience of the Massachusetts State College System may be useful to other institutions in evaluating the advantages and disadvantages of student participation in bargaining.

Eight of the eleven Massachusetts State Colleges are unionized—four by the AFT and four by the NEA. Each is a separate unit, and negotiations are conducted on a campus by campus basis.

In 1970, the AFT organized the faculty at Boston State College opening the way to additional election victories in 1971 and 1972 at the Massachusetts College of Art, Worcester State College and Lowell State College. Following the AFT's early lead, the state's NEA affiliate, the Massachusetts Teachers Association, won the right to represent faculty at Salem, Fitchburg, North Adams and Westfield State Colleges. At the present time all four of the AFT campuses are under contract. Three of the four NEA campuses are in negotiations, but none have yet an executed agreement. At the time they unionized, only a few of these campuses had a viable faculty senate or other form of governance, and those had shallow roots. The virtual absence of faculty and student involvement in campus decision-making strongly influenced the decision of the Board of Trustees to include governance as a matter for negotiations. The trustees believed that the incorporation of governance structures into the contract would stabilize the operations of the campus, and guarantee to the faculty at large—not to the union-*qua*-union greater influence over their own

professional lives and the future of their institution. It was to accomplish this purpose that the Board in 1970 opened the scope of negotiations to include not only governance but faculty evaluation, faculty workload, and faculty promotion and tenure processes. As a result of that decision, the question of the role of student participation was first raised in Massachusetts, and the Trustees took the affirmative position that if governance was to be negotiated, students must be included in the contract governance structures. Moreover, they instructed their chief negotiator to make every effort to obtain the cooperation of the unions to permit students to come to the table.

As it developed, both the AFT and NEA resisted student involvement in negotiations until late in 1972. Thus, contracts were bargained and executed with the AFT at Boston State College, Worcester State College, the Massachusetts College of Art, and at Lowell State College without a student present at the table. Nevertheless, students were included in the contract itself at each of these four institutions. These contracts guarantee them a right to equal representation on all governance committees, including committees on curriculum, the college calendar, budget development, admissions, and, most importantly, parity of representation on the central campus-wide, tri-partite governance body called the All-college Council. Moreover, they were given an important voice in faculty evaluation at the departmental level.

In late 1972, by mutual agreement between the Board of Trustees and NEA affiliate which then represented the faculty at North Adams State College, Fitchburg State College, and Salem State College, students were finally invited to sit at the bargaining table. A written agreement was reached and signed by the board, the NEA faculty leadership, and the students setting forth the following key provisions for student participation in negotiations:

1. That the Student Government Association would be responsible for selecting the students who would form the student bargaining team.
2. That the number of students on the student team would be equal to the number of members on the administration team and the faculty union team, respectively.
3. That the student bargaining team would be allowed to *participate* in table negotiations, and would be permitted to address any issue brought to the table by the two parties in their proposals and counter-proposals.
4. That the students, would, therefore, represent the entire student body and would exercise their independent judgment in representing student views on bargaining issues. (Thus, the students were not a part of either the administration or the union team, and agreed not to consult or deliberate privately with either away from the table.)
5. That the student team would be accorded the same right to caucus as the parties; in the event of a caucus, the parties agreed to suspend their negotiations in order to permit the students a reasonable time to confer.
6. That the student team was understood to have no right to prevent either party to the negotiations from reaching an agreement.
7. That students would observe the negotiating ground rule on confidentiality and limit their communication about the progress of negotiations at the table to the Executive Board of the Student Government Association.

100

8. That immediately upon the conclusion of negotiations, and after ratification of the contract by the union and acceptance by the board, the Student Government Association would bring the contract to the student body for a campus-wide student referendum. Through this referendum all students would be able to indicate by secret ballot whether they wished to accept those portions of the contract in which students were expressly involved (for example, on such committees as curriculum, admissions, college calendar, and faculty evaluation). A No vote would result in the removal of students from those contract provisions but would in no other way impair the agreement between the parties.

At Salem State College, the Student Government Association, not to be outdone by the Board or the Faculty Association, retained an attorney to sit with and represent the student bargaining team in negotiations. The parties agreed to admit the students' attorney to the table after he consented not to speak for or on behalf of the students. Silence is a difficult restraint for any lawyer, but it was a necessary procedure in this instance to insure that student interests were represented by student spokesmen.

In Conclusion

In evaluating the Massachusetts experience with student negotiators, I must candidly note that it was not without its difficult moments. There was occassional acrimony between the parties and the students over particular issues. Nevertheless, the result of student involvement added a constructive dynamic to the bargaining process, tending to keep both sides more honest when dealing with matters affecting student interests. The fear that a student's presence at the table would destroy the integrity of the bargaining process itself, or at least seriously compromise the bargaining ability of the two parties, did not materialize.

Whether in the future the NEA in Massachusetts will continue to cooperate in permitting students a meaningful role in bargaining, is now, however, an open question. Leaders in the Massachusetts Teachers Association have already signaled their displeasure with the lack of support students have given to faculty positions at the table, and may resist student involvement next time around.

Despite its sometimes uneven quality and its uncertain future, the Massachusetts experiment with student participation at the table, and student involvement in the contract itself, has positively helped to prevent polarization of the state college communities.

Thus, the Massachusetts lesson may be to suggest that for some institutions the negotiating table can become a future alternative to the conference room for effectively reconciling the interests of faculty, administrators, and students.

101

"Do Students Have Any Place in Collective Bargaining?"

by ALAN SHARK
Immediate Past President, Student Senate, C.U.N.Y.

Do students have a place in collective bargaining? I am a little bit biased and I say yes, very much so. I would like to state that there are actually three basic student theories. The first is that increases in salaries and fringe benefits won by the faculty unions will come out of student pockets in the form of higher tuition and fees. A second theorm is that faculty collective bargaining will diminish the expanded student role in campus decision-making won during the turmoil of the 1960's. The third is that faculty strikes will interrupt the student's education. I think these fears are very legitimate and have been witnessed by many student leaders across the nation.

There are many obstacles though facing students that want to become involved. Perhaps, the first and foremost is that of just understanding the process and that's probably the first and foremost problem the faculty have too. There are certain other restrictions such as legal recognition, gaining legislation that might help them, or finding an informal means that would enable students to participate in the process. Those are the three basic obstacles: 1) obtaining legalities to have them participate; 2) finding informal ways for those campuses that would refuse or, at this time, would prohibit students to engage in formally; and 3) to get legislation that would enable students to be involved.

An example of the struggle for legislation is on the West Coast. I recently returned from the state of Washington where in Olympia we worked on a bill trying to add in a new section that would incorporate students in the community college system with observer status, to see that their rights are protected. I don't know if this bill is going to pass. It is certainly controversial. Senate Bill No. 2158, reads something like this:

> In order to insure that due consideration is given to student concerns about matters which become subject to negotiation under this chapter, which may affect students and their rights, the employer shall allow the attendance of representative students at all meetings between the employer and the exclusive bargaining representative held in the course of bargaining.

In Massachusetts, in the state of Washington, in New York and in California the students are becoming quite involved. Their strategies are many. Students are lobbying. You have the student group in the State of New York, the University Student Senate in the State of New York, you have two lobbying groups in California. There are groups in Colorado and in the State of Washington that are right now lobbying for some kind of legislation that will enable them to participate in the process.

One strategy uses the courts. Students fearing faculty strikes, have been successful in obtaining court injunctions. In Chicago, in two Pennsylvania Community Colleges, and at Tacoma Community College in Washington students were successful in the litigation process.

102

Another strategy involves observer status. Observer status has been successful at four or five different campuses. In some cases students were part of one team or the other. Observer status to many students is the minimum they can accept to see that their interest is being protected. You also have indirect student participation as opposed to direct participation. At CUNY students were offered a part of either bargaining team, the administration or the faculty. Neither side said that we would be part of the team as far as being at the table is concerned. We would have been part of an overall policy committee of one of the two sides. Students at CUNY did not want to be against one side or the other, we wanted to be free to go by the issues. Take class size as an issue. We wanted to be free to choose between the issues and not between the sides. That we saw as a tremendous problem. Especially if you were part of one team and you were sympathetic to what the other team wanted. You also have, maybe a two-party or three-party system. Many people have talked about a tripartite arrangement.

The last strategy is humanization itself. This, perhaps, scares a lot of people. It bothers me too, because for many student groups, it might be just a name change. If it is to be humanization it has to be more than semantics. It's going to take a lot of resources, time, and money to parallel the structures of a faculty organization.

We talked about the obstacles very briefly. We talked about some of the basic strategies. I think the key here is we are talking about tools, we are talking about strategies, we are talking about procedures and I think that is very, very important. As the scope of negotiation increases so will student awareness about this entire problem. When negotiations began, I don't think anybody realized how much everything was tied together as far as students are concerned. Where else is there a model in this country where there is such a concept as shared authority? Yet, in the college community we do have a structure where students do sit on certain committees, they do participate. The scope of negotiations, in many cases, delves into these areas. In some cases bargains have excluded students from things that they had already been accustomed to especially in the areas of student evaluation or in grievance procedures.

I'd like to offer to you an outline of what I consider areas of student concern:

I Recognition
II Right to Negotiate
III Grievance Procedure
IV Student Rights, Academic Freedom
  A. Individual Rights, i.e. due process, freedoms, and responsibilities.
  B. Organizational rights.
    1. Student Government or Association.
    2. Student Union (check off).
V Delivery of Student Services,—Medical Health, Financial Aid, Counseling, Employment, Activities.
VI Access and Services of Campus Facilities.
  A. Library, B. Meeting areas, C. Athletic, D. Parking, E. Transportation, F. Book Store, G. Food services.

VII Student Evaluations—Procedures (administration of).
A. Faculty B. Administration C. Curricula D. Service Contracts
VIII Right and Access to information.
IX Grading Systems
X Class Size
XI Conditions of Enrollment
XII Tuition Policies and Guarantees
XIII Student hours and work load requirements
XIV The Academic Calendar
XV Budget Resource and Allocation i.e. Salaries
A. Faculty
B. Administration
C. Students
XVI Access and Protection of Student Records
XVII Decision Making, Participation Guarantees, Personal Decisions, Curriculum, Student Services
XVIII Amendment Procedure

All these things mentioned here, are things that students themselves have talked about on their local campuses. Everything starts from beginning with recognition. Students need to be rerecognized as a group. They have certain rights and responsibilities. They have the right to negotiate and they have already negotiated especially in campus government plans. On some campuses bargaining has already occurred, although it wasn't collective bargaining. Students feel very strongly that they should have a grievance procedure. At many campuses there are no formal mechanisms for a grievance procedure. Why can't students have a step-by-step method? In the State of Washington, at one particular community college, they do.

Students' rights and academic freedom are already spelled out, but the contract by two parties supercedes all existing laws already on campus. Many students feel that their bylaws, should not be superceded by something in a contract. Maybe this right should be protected in a contract too.

To some, this list might seem distrubing. What rights do students have? Sure, they have some kind of moral right, but they have no legal rights. And unfortunately, I must agree with you there is nowhere in the nation where students are given the right legally to negotiate as a third party. They are given the right to involve themselves informally but, I think as we are seeing in Massachusetts when certain elements are saying that students are no longer serving our needs, maybe we don't want students to be in the process, student involvement is illusory. It might be that the informal method will not be that successful. It might mean that we must move into some more formal structures, and it's unfortunate in some ways but the student is being left out in a situation where he had been part of an academic community.

The next few years may be very interesting when students are rallying with their State Legislatures. What extent will they have an impact in trying to change the thinking of many people who cling to the industrial model that says there will be only two parties, management and employees. I see no example of any other institution in this country where the difference between the two sides

are more similar. Because the management and employees are not like something you find in a factory because the people in many cases have the same education, have made the same chores. You have the administrators teaching and teachers administrating. The students are a part of this academic community. It is only a matter of time before students can prove this.

105

Do Students Have Any Place in Collective Bargaining?

by NORMAN SWENSON
President, Cook County College Teachers Union

The position of our Faculty Union developed over a period of eight years of collective bargaining is that students should participate in college governance and should develop their own collective bargaining relationship with the Board. From the beginning, we have encouraged the City Colleges Student Government in their continuing efforts to improve the rights and status of students.

As a result of these efforts, Student Government, in the fall semester 1971 concluded a written agreement with the Board entitled *Student Rights and Responsibilities*. A copy of the *Agreement* is attached. The *Agreement* has now been incorporated into Board Rules, so that it has the same legal standing and force of law as the faculty collective bargaining *Agreement* and the non-academic employee's collective bargaining *Agreement*. All of these agreements have been incorporated into Board Rules.

Our Union has taken the position that students should have the same status and rights as employee groups such as faculty and non-academic employees. These rights should include the right to organize, to bargain collectively and to strike, if necessary to enforce demands. We have consistently opposed the idea that students or any other part of the college community should be treated paternalistically or included as a subgroup within an agreement negotiated by the faculty.

City Colleges Student Union Agreement

The Agreement negotiated by City Colleges students contains a number of provisions which enhance the power and status of students. Among these provisions are:

1. *Student Government.* The right to organize and establish a student government and to adopt a constitution. Funds collected through the student activity fee are to be used solely for student purposes as approved by the student government and the Campus Head.

2. *Student Participation in College Governance.* "The student government of each of the colleges shall be allowed to designate a student representative to each of the policy-making committees at its college." Under Illinois law, the city-wide student government also designates a student as a non-voting member of the Board of Trustees. The faculty are *not* accorded a similar right under Illinois law.

3. *Student Constitutional Rights.* All constitutional rights are assured to students including freedom of speech, press, peaceful assembly, association, political beliefs, etc.

4. *Due Process Rights.* Prior to the suspension of a student, a formal written complaint is required followed by a formal hearing including the right to be represented by counsel, the right to cross examine witnesses, the right to testify,

106

the right to answer all charges, etc. The hearing committee is to be composed of two administrators, 2 faculty members and 2 elected student representatives.

Areas of Common Interest

The faculty, non-academic employee and Student Government have common areas of interest. These areas include, but are not limited to:

1. *Evaluation of faculty and administrators.* Under departmental evaluation procedures, students have the right to submit evaluations of faculty members and survey forms are utilized for this purpose at each college.

2. *Curriculum, Registration, Budget and other academic governance committees.* As mentioned previously, student government has representatives on all educational policy committees.

3. *Fight against tuition.* Both Student Government and the faculty union have declared unalterable opposition to the policy adopted by the City Colleges Board imposing tuition for the first time in the 63-year history of the City Colleges. So far we have been successful in getting the Board to reduce the proposed tuition from $5 to $4 per credit hour. However, we will not be fully satisfied until tuition is completely rescinded.

4. *Student Health Care Centers.* Through negotiations, students and faculty succeeded in 1971 in establishing student health care centers at each college, fully staffed and equipped.

5. *Student and Faculty Day Care Centers.* In cooperation with students we have succeeded in establishing day care centers at two of the eight City Colleges. We are still attempting to negotiate the establishment of day care centers at the other six colleges.

These are only some of the areas in which we cooperate throughout the year as well as during contract negotiations. As a result of these common efforts, we believe we have a fine relationship and excellent rapport with Student Government.

PROPOSAL

STUDENT RIGHTS AND RESPONSIBILITIES

As a student at the City Colleges of Chicago, you are being asked to indicate your approval or disapproval of this document. It is the result of some 20 joint sessions by students, faculty and administrators who began working on the proposal in February, 1971. Now you are requested to vote your approval or disapproval of the entire proposal. After you have voted, please cut or tear off the ballot and drop it in a mail box. It is self-addressed and postage-free. Your ballot must be returned by October 4, 1971, to be counted.

Student Government

At each college students have the right and responsibility to organize and establish a student government of their choosing under a constitution subject to review and ratification by a majority of the student body voting without further

approval by either faculty or administration, provided that the constitution is not contrary to applicable law or the Rules of the Board of Trustees of Junior College District No. 508. Members of the student government must be selected by a democratic procedure and must be students registered at the college. The role of the student government and both its general and specific responsibilities shall be made explicit by the students at each college and the actions of the student government within the areas of its own jurisdiction shall be reviewed only through orderly and prescribed procedures. Funds allocated to student activities shall be expended only upon request of the student government. The student government may submit vouchers to the appropriate administrative officer of the college for the expenditure of these funds. These vouchers shall be honored if they are expenditures for student activities and if they are consistent with applicable law, Board Rules or policy. If any student government voucher for expenditure of funds is denied at the local campus, the student government shall have the right to appeal that decision to the Chancellor. The student government shall be advised of the balance remaining in the student activities fund each month and, any time the Board audits the said fund, it shall be provided with a copy of said audit.

Student Directory

The student government at each college shall have the right to compile a student directory containing the following information: Name, year of studies, address and telephone number. Directory information from a student shall be obtained only with the approval of the student, who will give his approval by signing a card. The student government must be given the opportunity to gather directory information at the most favorable time, probably during registration.

Student Participation in College Governance

The student government at each of the colleges shall be allowed to designate a student representative to each of the policy-making committees at its college. Said representative shall be entitled to the same notice accorded members of the said committees. The object of this provision is to bring the viewpoint of the student body to each of these committees.

Student Citizen Rights

Students who are citizens of the United States enjoy the same basic rights and are bound by the same responsibilities to respect the rights of others as are all citizens. Foreign students have the same rights and responsibilities, except as limited by law. Among those basic rights are freedom of speech, freedom of press, freedom of peaceful assembly and association, freedom of political beliefs, and freedom from personal force and violence, threats of violence, and personal abuse. The exercise of such rights shall be subject to the necessity for the orderly functioning of the college, and are subject to valid and constitutional regulation by the college.

Right to Organize

Students have a right to organize or join any college organization or association provided that they submit to the Vice President for Student Affairs (a) a statement of purpose for the organization, (b) a standard statement of non-discrimination and (c) a list of officers or organizers. Such organization or associations shall be permitted use of college facilities during normal operating hours when such use does not interfere with instructional or other activities at the college. Such organizations or associations shall comply with the rules and regulations of the college.

Protection Against Improper Academic Evaluation

Students shall have protection through orderly procedures seated in writing against prejudiced or capricious academic evaluation. The development of orderly procedures shall be implemented at the individual colleges by agreement between students, faculty and administration.

Protection Against Improper Disclosure of Student Opinion and Association

Information about student views, beliefs and associations and judgements of ability and character that faculty members, administrators or staff acquire in the course of their work shall not be communicated to persons outside the college community without the student's permission.

Confidentiality of Student Files

Student files, including any letters of recommendation, amintained at the college shall be open to inspection by the student or any other person he designates. Such records shall not be available to any person not on the college staff or any unauthorized person on the college staff without the student's permission. The student has a right to add a personal statement to the file, and to have any particular letters of recommendation added. Before any derogatory material is placed in the student's file, the student shall be shown the derogatory claim and initial it, and must be given the right to answer the claim which shall be included in the file.

Off-Campus Activities

No rule or regulation of the college shall apply to a student's off-campus activities, unless the college's interests as an academic community are distinctly and clearly involved.

College Authority and Civil Penalties

When the activities of a student result in violation of law, college officials should be prepared to direct him to sources of legal counsel consistent with legal ethics.

Due Process Rights

INFORMAL HEARING

Prior to suspension of a student for any period less than 6 school days, the student shall be given a written statement of the complaint against him and an opportunity to present his version of the facts. The President, on the basis of both the complaint and the student's answer shall make his decision. His decision shall be communicated to the student in writing.

FORMAL HEARING

Prior to the expulsion of a student, or his suspension for a period of 6 school days or more, the student shall be accorded a hearing on the charges upon which such disciplinary action could be based. A representative of the student press and of the student government, and such other persons as the President designates shall be entitled to attend the hearing.

The hearing to which the student is entitled shall be conducted by a hearing committee designated by the President. The hearing committee will be composed of 2 administrators, 2 faculty members and 2 elected student representatives, each appointed by the President. Prior to such hearing the student shall be advised of

the charges against him. At the hearing he shall be entitled to be represented by an attorney or advisor of his choice.

The student will be given an opportunity to testify and to present evidence and witnesses. He shall have an opportunity to hear and question adverse witnesses. In no case will the committee consider statements against him unless he has been advised of their content and of the names of those who make them, and unless he has been given an opportunity to rebut unfavorable inferences which might otherwise be drawn.

All matters upon which the decision may be based must be introduced into evidence at the proceeding before the hearing committee. The hearing committee's recommendation to the President should be based solely upon such matters. Improperly acquired evidence should not be admitted.

After the hearing, the President shall be advised promptly of the recommendation of the committee and the substance of the evidence on which that recommendation is based. In making his decision, the President may accept or reject the committee's recommendation. If he rejects the recommendation, he must state his reasons for rejection in writing. In any event, the President shall advise the student in writing of his decision within three school days of his receipt of the recommendation of the committee.

The President may suspend the student pending such hearing where his presence on the campus is likely to interfere with the maintenance of proper order. Where the student has been suspended pending a hearing the student shall have a right to a hearing within 5 school days of the first day of the suspension.

A decision of the President to expel or suspend a student in excess of 6 days shall be forwarded to the Chancellor. The Chancellor shall be advised of the substance of the evidence on which the decision was based. The student shall be notified that the decision has been forwarded to the Chancellor.

In the event the student charged disagrees with the decision of the President, he may appeal the decision to the Chancellor. To do so, he must submit to the Chancellor within 5 school days following the President's decision, a statement specifying in what respect he disagrees with the decision. The Chancellor shall advise the student in writing of his decision on the appeal within 5 school days after receipt of the student's statement.

The Chancellor may uphold the President's decision, limit its duration, reverse the decision, or permit the student to enroll in other colleges in the system.

(cut along the line)

REFERENDUM

STUDENT RIGHTS AND RESPONSIBILITIES

☐ I DISAPPROVE

☐ I APPROVE

The Distinguished Advisory Committee to the Center

The Center has the benefit of a broad base of advice and guidance from the following distinguished and knowledgeable persons in the field of collective bargaining and higher education:

Arvid Anderson	Chairman, Office of Collective Bargaining, City of New York
David Ashe	Board of Higher Education, City of New York
Neil S. Bucklew	Vice Provost, Central Michigan University
D. Francis Finn	Executive Vice President, National Association of College and University Business Officers
Joseph Garbarino	Director, Institute of Business and Economic Research, University of California at Berkeley
Victor Gotbaum	Executive Director, District Council #37, AFSCME
Robert Helsby	Chairman, Public Employment Relations Board, State of New York
C. Mansell Keene	Assistant Chancellor for Faculty and Staff, California State College System
Thomas Kennedy	Professor of Business Administration, Harvard University
Michael H. Moskow	Assistant Secretary for Policy, Evaluation and Research, U.S. Department of Labor
David Newton	Vice Chancellor for Faculty and Staff Relations, City University of New York
Woodley B. Osborne	Director of Collective Bargaining and Associate Counsel
Alan Perl	Sturm & Perl, Esqs., New York, New York
Herbert Prashker	Poletti, Freidin, Prashker, Feldman & Gartner, Esqs., New York, New York
A.H. Raskin	Acting Editor, Editorial Page New York Times
Albert Rees	Department of Economics, Princeton University
David Selden	President, American Federation of Teachers
Joseph Shane	Director of Labor Relations, State of Maryland
Albert Shanker	President, United Federation of Teachers, New York, New York
Donald P. Walker	National Education Association
Clyde J. Wingfield	President, Baruch College
Edwin Young	Chancellor, University of Wisconsin-Madison

111

The National Center's Faculty Advisory Committee

Dr. Maurice C. Benewitz, Director of the Center, Professor of Economics, Former Chairman of the Department of Economics, Former Chairman of the Department of Economics and Finance, and former Dean of Administration. He is also Baruch College grievance officer for the faculty collective bargaining agreements.

Dr. Benewitz has taught at Brown University, University of Minnesota, Michigan State University, and the New School for Social Research. He is a practicing arbitrator on the panel of the American Arbitration Association, a mediator in the elementary and secondary education area, and a member of the National Academy of Arbitrators. (on sabbatical leave 1974-75)

Dr. Benewitz received his A.B. degree in 1947 from Harvard College and his Ph.D. in 1954 from the University of Minnesota.

Bernard Mintz, Professor of Management and Baruch's Executive Vice-president for Administration. From 1966 through 1969, Professor Mintz served as Vice-Chancellor for Business Affairs in the Central Administration of The City University and, until March 1972, Vice-Chancellor for Administration. His positions in The City University's central administration entailed responsibilities for all aspects of personnel and labor regulations for both academic and non-academic staffs and universities budget and business administration.

Vice-President Mintz was for many years a teacher of undergraduate and graduate management courses at the Baruch College and has served as a consultant to private businesses. Most recently he has conducted workshops and seminars at several universities on university faculty collective negotiations.

Vice-President Mintz received his B.S.S. degree in 1934 from the City College, and his M.A. in 1938 from Columbia University.

Dr. Samuel Ranhand, Professor of Management and former Chairman of the Department of Management.

Dr. Ranhand has been active as a consultant in the areas of management and labor relations and is a practicing arbitrator on the panel of the American Arbitration Association. He also is a mediator with particular emphasis in the education field.

Dr. Ranhand received his B.B.A. degree in 1940 from the City College, his M.B.A. in 1954 from New York University, and his Ph.D. in 1958 from New York University.

Dr. Theodore H. Lang, Professor of Education and Director of Graduate Programs in Educational Administration. Prior to coming to Baruch, in 1971, he served as Deputy Superintendent of Schools for Personnel of New York City Department of Education and before that was Personnel Director of the City of New York and Chairman of the City Civil Service Commission.

Dr. Lang has been active in the field of labor relations in government and public education and is a member of the AAA panel. Since assuming his position at Baruch, Dr. Lang has been active in establishing a program for the training of inner city school administrators.

Dr. Lang received his B.S. degree in 1936 from the City College, his M.S. in 1938 from the City College, his M.P.A. in 1942 from New York University and his Ph.D. in 1951 from New York University.

Dr. Julius J. Manson, Professor of Management and former Dean of the School of Business and Public Administration.

Dr. Manson has taught at Columbia University, New York University, the New School for Social Research, Cornell University and Rutgers University. He has a long and distinguished record in the field of labor-management relations both in the United States and abroad as a recognized authority in this area.

Dr. Manson received his B.A. (1931) and M.A. degrees (1932) from Columbia University, a J.D. degree (1936) from Brooklyn Law School and his Ph.D. (1955) from Columbia University.

Professor Aaron Levenstein, Professor of Management. He has also taught at the University of California, Cornell University, New York University, and the New School for Social Research.

Professor Levenstein has written and lectured extensively in the area of labor relations and has also served as consultant to various national organizations and public agencies.

Professor Levenstein received his B.A. degree in 1930 from the City College and a J.D. in 1934 from New York Law School.

Thomas M. Mannix, Acting Director of the Center, Assistant Professor of Education. Professor Mannix joined the Baruch College faculty in February 1973. He is a member of the Tenure Hearing Panel of the New York State Education Department and is a permanent arbitrator for the Social Service Employees Union Educational Fund in New York City.

Professor Mannix has lectured at Cornell and Syracuse Universities and at several branches of the State University of New York. He was active in the American Federation of Teachers in New York State before returning to graduate school in 1969.

PUBLICATIONS

• • •

1. *Proceedings* of the National Center's Third Annual Conference - available Fall 1975 ..... $ 7.00

   Second Annual Conference - 5.00

   First Annual Conference - 5.00

2. *Newsletter* - Five issues: Feb., Apr., June, Oct., & Dec.
   Volume 3 - 1975 ..... 10.00
   Volume 2 - 1974 ..... 10.00
   Volume 1 - 1973 (two issues) 4.00

3. *Bibliography 3* - updates *Collective Bargaining in Higher Education* with keyword index. Includes references published in 1974 Bibliographies and citations from *Proceedings* of Second Annual Conference. Available - April 1975 ..... 7.00

   Bibliography 2 published April 1974 ..... 5.00

   Bibliography 1 published April 1973 ..... 5.00

4. *Bibliography* of Higher Education Collective Bargaining Involving Other Than Faculty Personnel.
   Vol. 1 ..... 3.00
   Vol. 2 available Fall 1975 ..... 5.00

The 1975 subscription rate to National Center publications (Jan. 1, 1975 - Dec. 31, 1975) is $25.00 for the
Proceedings, Third Annual Conference
Newsletter, Volume 3 - 1975
Bibliography 3
Bibliography for Other Than Faculty Personnel, Vol. 2

Regular subscribers to the National Center for the 1974-1975 subscription year through December 31, 1975 will receive all the 1974 and 1975 publications.

114